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Annual Meeting at San Francisco July 10-14

To What Extent Should Decisions of Administrative Bodies Be Reviewable by Courts?—Ross Prize Essay, 1939

MALCOLM McDERMOTT

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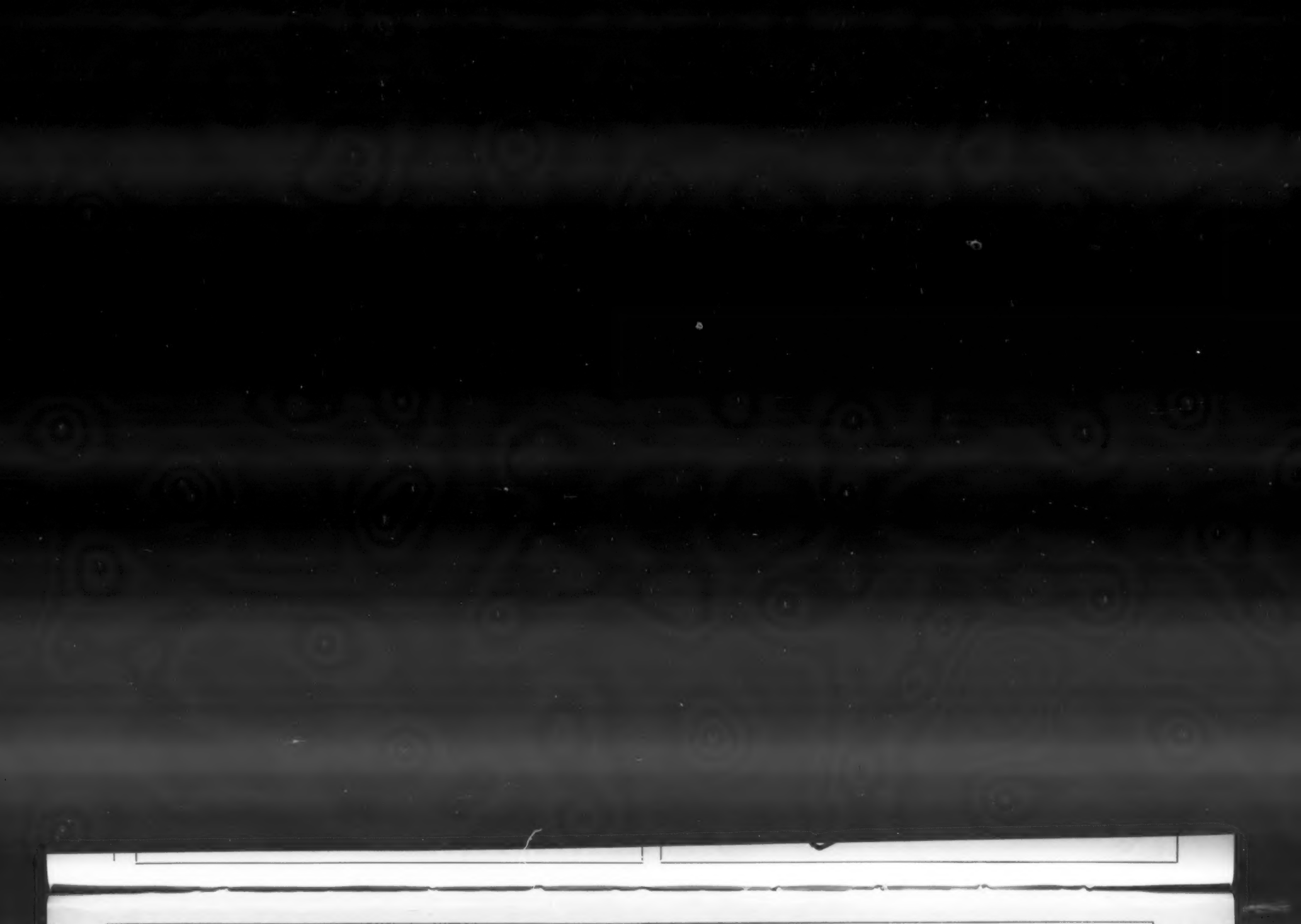

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CURRENT EVENTS

Board of Governors Holds Meeting in Washington

THE Board of Governors held its May meeting in Washington from May 8th to 10th with all members of the Board in attendance. Much of its time was occupied with the consideration of routine, administrative matters and the completion of final arrangements for the coming annual meeting. Of particular interest to the members generally, is the program for the Assembly which will include addresses by the General Counsel of the National Labor Relations Board and the Wages and Hours Administration and consideration of the reports of two important committees, the Special Committee on the Bill of Rights and the Special Committee on Survey of Sections and Committees.

The report of the latter Committee, whose Chairman is Frederick H. Stinchfield, former president of the Association, recommends the abolition of thirteen standing and special committees of the Association and the creation of one new section. It is expected that this report containing, as it does, in addition to the foregoing recommendations, an excellent survey of the work of the Association, will precipitate lively debate.

The Board received the report of the judges in the Ross Essay Contest and ascertained by reference to the numbers on file that the winner this year is Professor Malcolm McDermott of Duke University School of Law. Publication of the prize-winning essay in the current issue of the Journal was authorized.

Approval was given to the proposed act submitted by the Conference of Commissioners on Uniform State Laws, entitled Uniform Absence as Evidence of Death and Absentee's Property Act. It will be recalled that at the January meeting of the House of Delegates, a recommendation of the Board was adopted referring this act back to the Conference for further study and report. The present draft is the result of the adoption by the Conference of the suggestions made to it by the sub-committee of the Board.

The Section of Criminal Law reported progress toward the enactment by Congress of legislation authorizing the Supreme Court to promulgate uniform rules of procedure in criminal causes comparable to those adopted last year pertaining to civil actions.

The Section of International and Comparative Law met in Washington on May 10th and adopted certain resolutions which will be reported to the House of Delegates at the San Francisco meeting. The Council of the Section of Judicial Administration also held a meeting and the chairmen of a number of the Sections and standing and special committees were present in Washington and reported upon the work of their groups to the Board.

Winner of Ross Essay Prize for 1939

THE Ross Essay Prize for 1939 has been won by a representative and distinguished member of the profession, in the person of Malcolm McDermott, of Durham, North Carolina, who has been a Professor of Law at Duke University since 1930. Before that, he had engaged actively in the general practice of law for seventeen years in Knoxville, Tennessee, and had been President of the Tennessee Bar Association in 1920, as well as a member of the American Bar Association since 1920.

The prize awarded under the will of the late Judge Erskine M. Ross, of California, devoted friend of the American Bar Association, amounts this year to $3,000. The certificate of award, with the check, will be given to Professor McDermott at the Annual Meeting of the Association, in San Francisco, on July 13th. The subject in this year's competition was: "To What Extent Should the Decisions of Administrative Bodies Be Reviewable by the Courts." Ninety-two essays were submitted this year, and their authors included many well-known lawyers, jurists, and teachers of law. This year's committee to read the essays and recommend the award was composed of Judge Jesse C. Adkins, of the United States District Court for the District of Columbia; Professor Edwin M. Borchard, of the Yale Law School; and Ex-Judge William L. Ransom, former President of the American Bar Association.

The winning essay upon a most timely subject is published in this issue of the JOURNAL.

Malcolm McDermott is a native of Tennessee. He received his A.B. degree from Princeton University in 1910 and his law degree from Harvard in 1913. Engaged in the active practice of law in his native State from 1913 to 1930, he was Dean of the College of Law at the University of Tennessee from 1920 to 1930, President of the Tennessee Bar Association in 1920, member of the State Democratic Executive Committee of Tennessee from 1928 to 1932, and Democratic Presidential Elector in Tennessee in 1928.

Since 1930, he has been a Professor of Law at Duke University. In 1936, he was Visiting Professor at the Universities of Kracow and Warsaw, in Poland. He is serving on the Commission for Revision of Laws of North Carolina Relating to Estates, and is a member of the North Carolina Bar Association and the Tennessee Bar Association, and of the American Bar Association since 1920.

Economic Survey of Detroit Bar

THE economic welfare of the profession, locally considered, is the subject of a recent study and report by a special committee of the Detroit Bar Association. It recommends that a survey be made of all lawyers engaged in the Detroit metropolitan area to determine all relevant facts, and that the next committee give special study and consideration to a program of public relations, the establishment of legal service and legal reference bureaus, the desirability of public defenders, the creation of a placement bureau and certain cooperative economic measures.

Bar Libraries in Smaller Cities

THE urgent need for bar libraries in the smaller cities was stressed by both lawyers and law librarians who attended the meeting of the Carolina Law Library Association held at the Law School of Duke University, Durham, North Carolina, on April 7th. It was the consensus of opinion of those present that the pooling of efforts on the part of the lawyers in such communities would not only obviate needless duplication and expense but would make possible the creation of good working libraries for the use of all practitioners.

A special committee was authorized to prepare and distribute tentative drafts of lists of books suitable for North Carolina bar libraries costing approximately $2,000, $3,000 and $5,000 respectively.

Mr. Donald S. Gardner, Librarian, Supreme Court Library, Raleigh, North Carolina, was elected president and Miss Lucile Elliott, Librarian, Law School, University of North Carolina, was reelected secretary-treasurer.

West Virginia Begins Series of Legal Institutes

THE first of a series of legal institutes was held under the direction of the Committee on Legal Institutes of the West Virginia Bar Association, acting in conjunction with the Clarksburg Bar Association, on May 5th, at Clarksburg. An attendance of fifty out-of-town lawyers was drawn from widely separated parts of the state, as far south as Charleston, and as far west as the Ohio River.

Registration under the direction of Rupert A. Sinsel, Esq., of Clarksburg, was made between 1:00 and 3:00 P. M. at the Waldo Hotel. The meeting was opened by an invocation by Dr. Nelson H. Thorn, followed by opening remarks by the chairman, Robert T. Donley, of Morgantown. The subject for discussion was "The Trial of Negligence Cases," upon which Charles J. Schuck, Esq., of Wheeling, lectured first, presenting the matter from the standpoint of counsel for the plaintiff. Then followed a lecture by Hon. Harold A. Ritz, of Charleston, a former member of the Supreme Court of Appeals, discussing the subject from the standpoint of counsel for the defendant. The meeting was then opened for general discussion and suggestions relating to future institutes.

At 6:30 P. M. a dinner was held at the Waldo Hotel, attended by approximately 125 lawyers. Mr. J. C. McManaway, President of the Clarksburg Bar Association, was toastmaster. Following remarks by Mr. Donley, upon the purposes of the institute, an address upon the subject of "The New Federal Rules of Practice" was delivered by Hon. Harry Watkins, United States District Judge for the northern and southern districts of West Virginia.

Sincere enthusiasm over the success of the first institute was widely expressed, and the Committee plans to proceed immediately with arrangements for the second institute to be held in the southern part of the state within the next two months. The peculiar geographical situation of the state necessitates the holding of meetings in the northern and southern sections separately.

Committee members, and President William G. Stathers, of Clarksburg, expressed the opinion that much had been accomplished at the first institute, and believed that future institutes would greatly benefit by the experience gained in planning and holding the first one.

Arkansas Supreme Court Acts Under Recent Constitutional Amendment

THE Arkansas Democrat, issue of April 24, gives the action of the Supreme Court of that state in pursuance of the recent amendment to the Constitution authorizing it to make rules governing the professional conduct of lawyers. "While it is evident that we did not get everything we asked for," writes Mr. Howard Cockrill, of Little Rock, by way of comment, "we are greatly pleased with the results, and the Association at its annual meeting last week passed a resolution complimenting the action of the Court. We did not get our integrated bar; the Court assumed appellate instead of original jurisdiction; and the dues were made $1.00 instead of $3.00. On the other hand, the Canons of Ethics were adopted in toto, and trial by jury of laymen was abolished."

Following is the newspaper's account of the action of the Court:

"The Arkansas Supreme Court divided today, four to three, in the adoption of rules and regulations governing professional conduct by attorneys in the state as provided by Constitutional Amendment 28 adopted by the voters at the general election last November.

"Ten rules to control practicing lawyers were announced by the court in a majority statement signed by Chief Justice Griffin Smith and Justices Frank G. Smith, E. L. McHaney and J. Seaborn Holt. A dissenting statement, which declared that some of the rules 'violate the constitution of the state and the statutes, and in other instances, are unjust,' was issued by Justices Basil Baker, T. M. Mehaffy and T. H. Humphries.

"The rules embodied the code of ethics of the American Bar Association.

"A committee of seven lawyers will be appointed by the Supreme Court within a few days, one from each congressional district, to serve the appellate court in enforcement of the rules.

"The committee of seven will investigate all complaints of professional misconduct presented on affidavit. Trials of accused attorneys would be before either the circuit or chancery courts, without jury. Such complaints in writing would be filed with either of the courts in the district in which the accused attorney resides, or in which the alleged offense was committed. At least 20 days' notice shall be given the attorney before trial. Appeal to the Supreme Court is granted under Rule 4.

"A license fee of $1 is assessed against all practicing lawyers annually, the fee for 1939 being due July 1, and each year thereafter on January 1 to defray expenses for enforcement of the court's rules.

"Members of the committee on complaints and grievances will be paid travel and hotel, postage, communication, stationery and incidental expenses."

Oregon Bar Plans for Stop-over Visitors

THE Board of Governors of the Oregon Bar has appointed a committee to look after the entertainment of lawyers who visit Portland en route to or from the Annual Meeting of the American Bar Association at San Francisco. This committee would appreciate very much hearing from lawyers who plan to stop over in Portland so that it may greet them on arrival and look after their entertainment while there.

Portland has a great many attractions, including the world-famous Columbia River Highway, the Bonneville Dam, and perpetual snow peaks within less than an hour's ride. By way of sports it can offer golf, fishing and skiing. It will be very helpful if prospective stopover visitors will let the chairman know when they are coming and how they can be contacted.

The chairman of the committee is Austin F. Flegel, Jr., and his address is 909 American Bank Building, Portland, Oregon.

Washington Letter

Session's End Not in Sight

CURRENT estimates of when the present, that is, the first, session of the 76th Congress will end are of approximately equal and of very slight value as to their accuracy. Some of those members who also belong to the American Bar Association are regretfully reaching the conclusion that Congress will not adjourn before July 15th and therefore they will be unable to attend the Association's Annual Meeting at San Francisco the week of July 9th.

In several respects it seems that the work of Congress has been stepping along at a good clip; and then you will hear remarks to the effect that final adjournment is being delayed for this or that more or less political reason. The end of a session never can be foretold by viewing the work which is uncompleted because much of that would not be completed no matter how long the session might continue; and it takes the grand rush at the very end, with its threatened log-jams and filibusters, to force decisions on many controversial measures which probably never could be finished if unlimited time were available for their consideration.

The prevalence of air-conditioned quarters, no doubt, has its effect upon what might be called a recent inclination of Congress to remain in Washington during a part of the summer weather. Previously the near-certainty that one or more of the more elderly members would succumb to the continuous heat and humidity of our Chesapeake weather has furnished justification for hastening the end of a congressional session. Wherefore, this correspondent will not challenge any statement which says that the end of this session will occur at some time in August.

Criminal Procedure Rules

Hearings recently were concluded on the bill, H. R. 4587, to give the Supreme Court of the United States authority to prescribe rules of pleading, practice, and procedure with respect to proceedings in criminal cases prior to and including verdict, or finding or plea of guilty. This would apply only to the federal courts. The hearings were conducted by a subcommittee of the House Judiciary Committee; but, because of the importance of the bill and their personal interest in it, the full committee sat with them.

Among the witnesses appearing in behalf of this measure was Mr. Arthur T. Vanderbilt, President of the American Judicature Society and former President of the American Bar Association. Mr. Vanderbilt explained that this bill now before Congress would extend the rule making power in criminal cases similarly to what already has been done in common law and equity. He observed that this method simplifies the procedure much more than can possibly be done under a statutory code; and that the arguments as to the need for rules of civil procedure in law and equity apply with even greater force in this field of criminal law.

Mr. Vanderbilt further observed that in many states the system of criminal procedure is more backward than has been the case with civil procedure. He recounted that there is a movement in ten or twelve of the states to adopt as their rules of civil procedure the rules laid down by the Supreme Court for the federal courts; and he expressed the belief that such rules as may be adopted for criminal procedure will set an example that will be most helpful in the administration of criminal matters throughout the country.

Major Edgar B. Tolman, at his appearance before the committee, explained the difference between procedural rules and the substantive law, in the process of showing that legislation of this character does not trespass upon the functions of the Judiciary. He noted that the bill provides for laying down no rules of human conduct; but that it deals only with the matter of how lawsuits shall be tried.

Major Tolman recalled that the method of making the Federal Rules of Civil Procedure was a democratic one; that the Supreme Court called into existence a committee of fifteen men to do the drafting and other preliminary work; and that this committee sent to the several United States District Judges a request that they form committees in each district to make suggestions as to what should be and what should not be in the rules. Upon receipt of these suggestions, the committee prepared a tentative draft of the proposed rules, sending copies thereof to every District Judge, to every district committee, to all the bar associations, and to every one else who applied for them. Two or three more tentative drafts were sent out before the final draft was submitted to the Court, approved by the Court, and then submitted to Congress.

It was stated by Major Tolman that, in his travels over the country attending upon institutes and meetings for discussion of the Rules of Civil Procedure, in effect since September 16, 1938, he found no community in which the bar was not enthusiastically in favor of the rules. Other witnesses who appeared before the congressional subcommittee were: Alexander Holtzoff, Assistant Attorney General; Brien McMahon, until lately Assistant Attorney General in charge of the Criminal Division of that office; Otto Gresham, Attorney, of Chicago, contra; James J. Robinson, of the Indiana Law School, Chairman of the Criminal Law Section of the American Bar Association; Sylvester C. Smith, Chairman of the Association's Special Committee on Proposals Affecting the Courts of the United States; and William Denman, San Francisco, California, United States Circuit Judge.

The corresponding bill in the Senate is S. 1283, which has been referred to the Judiciary Committee and then to a subcommittee of which Senator O'Mahoney, of Wyoming, is Chairman. No hearings have been held on this bill and none is scheduled.

Judicial Administration of Courts

The Senate has just passed its bill, S. 188, to place within the Judiciary branch of the government the administrative machinery for the federal courts. Cong. Rec. (5-19-39), Vol. 84, p. 8171. The remarks of Senator Ashurst, whose name the bill bore, ran partly in this wise: "I am in such a high state of felicity over the passage of this bill that I cannot easily remain quiet. Permit me to congratulate the Senate Committee on the Judiciary, and particularly the submittee which considered this bill. It breaks new ground, and I believe for years to come it will remain a monument to their assiduity and their diligence."

The Senate subcommittee had held full hearings on the bill, the transcript of which was published, and the committee's report was Senate Report No. 426. A careful effort has been evident throughout the committee work in both Houses to get the bill in the best possible shape for final passage. The corresponding bill in the House is H. R. 2973. It is understood there will be forthcoming in the near future the report of the subcommittee of the Judiciary Committee of the House.

Some of the features of the committee hearings on the House bill are here indicated. Judge John J. Parker, Senior Judge of the United States Circuit Court of Appeals for the Fourth Circuit, described a yearly conference which had been held in his circuit, composed of five states, to which they invited all the United States District Attorneys, all the Attorneys General of the states, and the Presidents of the bar associations of the circuit, requesting also that the associations appoint five delegates

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TO WHAT EXTENT SHOULD THE DECISIONS OF ADMINISTRATIVE BODIES BE REVIEWABLE BY THE COURTS?

Essay Which Received the Award in 1939 Contest Conducted by the American Bar Association Pursuant to Terms of Bequest of the Late Judge Erskine M. Ross

By Malcolm McDermott
Professor of Law, Duke University Law School

A KEY to the practicable answer to this question is implicit in a statement by Mr. Justice Brandeis in his separate opinion in a recent case involving court review of an administrative adjudication:

"The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly."[1]

As here indicated, the question is one of supremacy and, at the same time, one of policy in limiting that supremacy. In making answer thereto we are put to the task of deciding for the future, on the basis of sound considerations of policy, how far the tribunals labeled "courts," which derive judicial powers from our written constitutions, should assume a position of supremacy over the rapidly multiplying host of administrative agencies, which in the main derive their powers from the legislature. Obviously, we are not bound by the present state of the authorities, modes of procedure, or trend of enactments, nor are these of any moment here except insofar as they may shed light on the problem involved and indicate a safe path for the future. The conclusions reached herein may call for changes in the existing law, both statutory and judge-made, but that is beside the point.

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In Anglo-American jurisprudence "supremacy of law" has long been regarded as fundamental in the proper administration of justice. Dicey's oft quoted passage undertakes to explain the orthodox meaning of the phrase:

"We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law, established in the ordinary legal manner before the ordinary courts of the land."[2]

This idea carried into literal application places judicial bodies in a position of complete supremacy in the field of adjudicating rights. No other bodies can supplant them, nor preclude their passing on all the questions incident to the judicial functions vested in them. As well pointed out by Dean Landis, such a view nullifies administrative adjudications except as they may serve to enlighten the courts which must later hear and determine *de novo*.[3]

Dicey's sweeping statement certainly is not in accord with present practice, nor was it accurate when written something over fifty years ago. For generations courts have been saying, and they continue to say, that there are limits to their power to review administrative determinations.[4] Whether such limitations are purely self-imposed, whether they proceed from an interpretation of our written constitutions, or whether they derive from legislative enactments deemed to be valid, are likewise questions beside the point.

What we here seek is a sound guiding principle for courts, legislatures and executives in the molding of the law in this difficult field. In this quest we shall assume the continued existence of those established basic rules of our constitutional system as expressed in bills of rights and other constitutional guaranties. These are not likely to be discarded even for the sake of administrative development, though present interpretations may be modified.

It must be apparent that in our organized system for dispensing justice there is nothing magic in the term "court of law," nor can there be anything inherently inimical in the term "administrative body." Originally, one or the other set of words might have been selected to designate a tribunal of either type. The same may be said of the word "judge" and the words "administrative officer." All of these are but

1. St. Joseph Stockyards Co. vs. United States, 298 U. S. 38, 84 (1936).
2. Dicey, Law of the Constitution (8th ed. 1923), p. 183.
3. Landis, The Administrative Process (1938), p. 124.
4. For an early case, see Easton vs. Calendar, 1 Wendell

convenient designations of instrumentalities designed to protect human rights and to promote the welfare of society.

It is true, however, that in the growth of our legal institutions certain well-defined characteristics have come to mark and to differentiate these two classes of tribunals as they are now generally known. Each has its weaknesses and each its peculiar merits. The two exist today separately, side by side, just as once did courts of law and that tribunal of the king's chief administrative officer, the Chancellor. The patent difference is that, whereas the Chancellor undertook in some degree at least to override and to supplement the functioning of law courts, the present situation is one wherein courts of law are doing somewhat the same sort of thing with respect to administrative boards. That the two systems may later coalesce, as did law and equity, is a possibility too remote to offer a solution for the immediate problem. Generations were required in which to develop the Chancellor's jurisdiction into the science of equity which could be merged into law. It will require a longer period in this complicated modern world to work out any systematized concepts that might be termed administrative jurisprudence, when the agencies involved are necessarily heterogeneous in character and in purpose.[5] Meantime the existing situation must be reckoned with.

In considering the scope that should properly be accorded under the present state of affairs to court review of administrative adjudications, the nature of these two kinds of tribunals must first be scrutinized. As already mentioned, each possesses its peculiar attributes.

The term "court" connotes a tribunal which is: impartial, open to all alike who seek redress therein, presided over by one or more jurists learned in the law, removed from the passing pressure of politics and prejudice, governed by more or less fixed principles in arriving at its decisions, bound by the rule that no final adjudication is to be made until after due notice to all the parties with opportunity for a full and fair hearing. Under the American constitutional system, we have further come to regard courts as the ultimate arbiters of the meaning of the law, and particularly of that law embodied in written constitutions, even to the extent of passing on the validity thereunder of acts by all other branches of government.

On the other hand, the term "administrative body" signifies an authority or body composed of one or more officials and which is designed: to carry on certain of the business of government, to dispense certain services or privileges accorded by government, to regulate certain public callings, to promote the general welfare through police regulations, to determine rights of individuals in certain cases where a strong social policy is involved, to use a varying degree of discretion in arriving at decisions and, often, to proceed without being bound by some of the so-called technical procedure of law courts. Such bodies are conceived of as being staffed by men who, if not so at the outset, are deemed to become something of experts in their particular fields; frequently they are commissioned by the statute under which they function or by the complexion of the authority appointing them, to exercise their powers in accordance with a pre-determined policy.

The advantages on the side of courts may be said to lie in the independence of these tribunals, the fixity of rules applied uniformly in all cases of a given type, expert knowledge of the law applicable to each case, and fairness of the procedure followed which insures due notice and opportunity to be heard. The disadvantages are delay, cumbersomeness, lack of expertness on the part of both judge and jury in the matter of fact finding in complicated fields, and especially the inherent limitations on a court's functioning, in that (1) it must await the coming of a litigant to set its processes in motion, (2) its decrees operate in general only on the parties before it, which fact in turn tends to limit a court's perspective, and (3) it is confined, except in extraordinary cases, to adjudicating with respect to past happenings.

The advantages incident to administrative boards are promptness of action, a possible combination of legislative, executive and judicial functions thereby promoting effectiveness and making possible the prevention of future harm, expert handling of particular classes of cases by men skilled therein, the use of discretion which permits of the development of a defined, social policy based on a broad perspective, and independent initiative without the necessity of intervention by a litigant. The well-recognized disadvantages pertaining to administrative action are the tendency toward arbitrariness, lack of legal knowledge, susceptibility to political bias or pressure, often brought about by uncertainty of tenure, a disregard for the safeguards that insure a full and fair hearing, and a dangerous combination of legislative, executive and judicial functions.

By the foregoing summary it is not meant to imply that all the features, advantages, and disadvantages enumerated are to be found in every tribunal of the types described. These are but the outstanding characteristics that are common and which have come to be regarded as typical. As such they will serve as a basis for our further consideration of the subject.

Administrative boards have undoubtedly become an essential part of our legal system.[6] The numerous factors that have led to their coming need not here be reviewed. The significant point is that they do possess attributes which render them indispensable. Those attributes have been set out above in the list of advantages peculiar to such bodies. At the same time it must be borne in mind that administrative tribunals have their inherent weaknesses and defects, the more pronounced of which have likewise been enumerated.

With these considerations clearly in mind, we are now in position to state the broad general principle that should govern in formulating a policy of court review of administrative adjudications. It is here submitted that such review should be limited so as not to destroy the peculiar benefits of administrative action, while it should be extended so as to remedy the weaknesses of such action. To state it otherwise, court review should obtain only at the points where administrative action is defective and where court action is effective, in the functioning of our governmental system. Insofar as administrative action can fulfill its need, thereby supplementing and fortifying our legal system, there should be no occasion for court review, except at those points where judicial tribunals can make a superior contribution.

While this may seem to be a nebulous and ephemeral doctrine, it is basically sound, as will more clearly appear when it is hereinafter applied to the various types of cases.

5. "It is impossible . . . to find and apply rules and principles in the administrative field similar to those said to exist in the common law and statute law fields." O. R. McGuire, Federal Administrative Action and Judicial Review, 22 A.B.A. Journal, 495 (1936).

6. See Address of Chief Justice Hughes, New York Times, February 13, 1931, p. 18.

In the further discussion of the problem it will be assumed that administrative boards have been set up and will continue to be set up in those situations where the nature of the circumstances involved calls for tribunals possessing peculiar advantages over courts, as already outlined. It seems obvious, therefore, that the functioning of courts in relation to these bodies should be so regulated as not to destroy those advantages which ought to be accorded full play, but rather to serve as a check and safeguard against the inherent disadvantages of such tribunals.

Again it must be emphasized that we are not here primarily concerned with what statutes do provide on this subject, nor with what the courts have done in respect thereto. We seek to find what should be provided, and what should be done, as a guide for the legislative draftsman and for judges as well.[7]

Within the limits of this article it is not possible to apply the doctrine of limited court review as formulated herein to all the different kinds of administrative boards known to our law. Nor would such an attempt prove helpful with respect to boards as yet unborn. On the other hand, broad generalization cannot be indulged in, for the subject matter is too diverse for wholesale treatment. It is possible, however, as some writers have well observed, to group administrative boards into classes depending on the general nature of the functions they have to perform. While there exists no general agreement on the details of such classification, the following may be adopted as a logical and suitable one:

1. Bodies set up to function in situations wherein government is offering some gratuity, grant or special privilege.

2. Bodies set up to function in situations wherein government is seeking to carry on certain of the actual business of government.

3. Bodies set up to function in situations wherein government is performing some business service for the public.

4. Bodies set up to function in situations wherein government is seeking to regulate business affected with a public interest.

5. Bodies set up to function in situations wherein government is seeking under the police power to regulate private business and individuals.

6. Bodies set up to function in situations wherein government is seeking to adjust individual controversies because of some strong social policy involved.

It is clear that with respect to all of these types of administrative bodies there are certain questions which should always be open to court review. The first of these is, logically, whether a particular board is authorized by the statute creating it, to do what it has assumed to do. This presents the problem of *ultra vires*, and generally is a question of law in that it calls for an interpretation of the statute under which the board functions. It should be the province of judges, who are experts in the interpretation of statutes, to pass on such a question.[8] This is peculiarly necessary when it is observed as a fact that there exists a natural tendency on the part of administrative boards in their zeal for the cause they serve, to go further in their activity than the statutes authorize.[9] A similar right should, of course, be vested in the courts to determine the constitutional validity of any act by an administrative board even though it may be authorized by statute. Here again is involved a pure question of law which properly should be passed on by those expert in the construction and application of constitutional provisions.

A more difficult situation is presented where a valid statute gives the administrative board jurisdiction to act only when certain facts shall have been found to exist. This sort of mixed question of law and fact may arise with respect to many of the types of boards above classified. We are confronted with the problem of whether the court, expert in the law, should be permitted to review the facts found by the administrative body which is deemed expert in the determination of facts within that particular field, simply because the question of jurisdiction is raised. Since there are different factors involved depending upon the type of administrative board concerned, the consideration of this problem is postponed until the various types are considered separately. As has well been pointed out by an astute critic of the entire subject, it will not suffice to attempt to draw a hard and fast line between questions of law and questions of fact, in this matter of delimiting court review, since such a line cannot actually be drawn, as evidenced in this instance by what must be termed a mixed question of law and fact.[10]

A question more analogous to the one first stated arises where, on the face of the record of the administrative action involved, it affirmatively appears that some rule of law has been ignored or misapplied. Here again, is an appropriate place for court review of the administrative action, since this is the field in which the court rather than the administrative body is peculiarly skilled. It should be noted that we do not here include that class of cases wherein merely the effect of the administrative action is claimed to amount to an invasion of the complaining party's rights under the constitution; the consideration of such cases is likewise temporarily postponed. But it should at the same time be noted that there is here included that large group of cases where administrative action involves the finding of certain facts and it affirmatively appears in such record as is required, that there is no substantial evidence to support the findings arrived at. This clearly presents a question of law, for a finding without substantial evidence is contrary to law, and the subject is properly one for court review on the grounds above stated.

It is submitted, therefore, that court review of all administrative action should be permitted with respect to the kinds of questions of law indicated, not because they are questions of law, but because courts are better

7. As a striking example of the fact that there is no certain legislative policy on this question of court review, see the new Food, Drug and Cosmetic Act, 21 U. S. C. A. sec. 371 (Supp. 1938) which provides for broad court review of general regulations which can be adopted only after public notice and hearing and only where there is some supporting substantial evidence. This apparent change in legislative attitude toward administrative action was adopted by Congress despite the Supreme Court's recent holding in Pacific State Box and Basket Co. vs. White, 296 U. S. 176 (1935), to the effect that general administrative regulations, being legislative in character, need not be supported by findings.

8. Some early opinions have gone so far as to state that the court will not review an administrative officer's interpretation of the law under which he acted. Riverside Oil Co. vs. Hitchcock, 190 U. S. 316, 324 (1902). This and similar cases might be explained on the ground that the method of review invoked was an application for a writ of mandamus, which may account for the courts use of broad language in declining to review administrative discretion.

9. A recent illustrative case is, Jones vs. Securities and Exchange Commission, 298 U. S. 1 (1936).

10. See Dickinson, Administrative Justice and the Supremacy of Law, p. 54 ff. (1927).

qualified to pass thereon than are administrative boards, and because the ordinary handicaps incident to court action do not prevent courts in such cases from performing the valuable service of keeping administrative action within its proper bounds and indicating general rules for future procedure that will tend to protect against administrative aggression and error.

The debatable ground is that embraced within the domain of fact. The tendency has been to make findings of fact, by certain types of boards at least, conclusive on the courts where such findings are required and if they are sustained by any substantial evidence when a record of the evidence is necessary. Here, again, different factors are involved with respect to the different types of boards, and this matter will be discussed under the separate headings. It must be said in behalf of courts that they have been quite ready to apply the rules of conclusiveness by way of self-imposed restraint, and have shown little disposition to invade the field except where they have felt constrained to do so in exceptional cases.[11] It will not do, however, broadly to assert that there should be no review on questions of fact. Such a position leads to unfortunate results as hereinafter shown.

When Mr. Justice Brandeis used the latter part of the language quoted at the outset, saying that supremacy of law demanded that court review should be confined in part to deciding whether the proceeding in which facts were adjudicated "was conducted regularly," he had reference, undoubtedly, not only to the requirement that the administrative board must function in accordance with statute law, but also that those requirements of notice and hearing essential to due process must be observed in the cases where notice and hearing should be accorded. It goes without saying that notice and hearing are not essential to the validity of all administrative action, any more than is fact finding, and hence these requirements of regularity will be considered in their proper place under the several types of boards considered.

We are now in position to consider specifically the six types of administrative boards as above defined, with a view of determining the extent to which court review should be allowed as to each, aside from the general power of review on the kinds of questions of law already shown to be applicable to all such boards, applying the guiding principle heretofore laid down.

1. *Bodies set up to function in situations wherein government is offering some gratuity, grant or special privilege.* Examples of such administrative authorities are those dealing with pensions, land grants, unemployment compensation, and the like.

a. *Discretion.* In these situations the citizen is ordinarily an applicant, without right other than that created by the statute setting up the board to administer it. Here it would seem that the exercise of discretion by the board should be final unless clearly illegal or, what amounts to the same thing, capricious, fraudulent or arbitrary. These administrative authorities are peculiarly adapted to the functions to be performed, giving continuous and expert attention to these particular types of cases. Courts can make no contribution of value in a separate judgment on the facts. Hence, there should be no review on mere questions of fact. Questions of jurisdictional facts may and do arise in such cases, as where the Land Department undertook to determine that certain lands were above high water mark and hence subject to government patent which was granted.[12] The contention was made that the land involved lay below this mark, and thus was raised a so-called mixed question of law and fact. Assuming that the administrative authority has erred in its judgment on such issue of fact, is there any assurance that a court may not err? Of course, if the case be one where the authority has acted wholly without lawful warrant, then it would seem that an error of law has been committed and the matter should be subject to court review on that ground.[13] But on the mere allegation of mistake or erroneous adjudication in some detailed determination, even though it abstractly relates to jurisdiction, the finding of the administrative authority is as likely to be correct as is that of a court. Government is a party in interest merely to dispense bounty to individuals. It is not going too far to say that individuals shall be bound by the judgment of administrative officials commissioned by government for this purpose.

b. *Notice and Hearing.* It cannot successfully be urged that notice and hearing are essential to due process in cases before such boards. Since government is dispensing gratuities it may do so on such terms as it sees fit. Therefore, when the statute is otherwise complied with, the proceeding is "regular" even though the individuals interested have not been accorded these features of a court proceeding. Thus there exists no occasion for review on this ground.

2. *Bodies set up to function in situations wherein government is seeking to carry on a part of the business of government.* Examples of such administrative authorities are those dealing with taxation, customs duties, draft, control of public officers, matters of state, immigration, and the like.

a. *Discretion.* In all such cases government is the direct party in interest, engaged through its executive officers in carrying on the business essential to its very existence. When that business is being carried on pursuant to lawful authority, there is no ground for substituting the judgment of a court for the judgment of those charged with the duty of administration. Here, again, courts as such can make no superior contribution by their decisions on the facts. Courts have long since recognized this in the tax and customs cases, holding that they will not interfere with the valuations fixed by the administrative authorities.[14] Undoubtedly, injustice is done by erroneous valuations, but the court is quite as likely to err as is the assessing body experienced in such matters. A somewhat similar answer applies in the raising of armies, appointing and removing of public officers, and in so-called matters of state. We have here arrived at the very heart of executive discretion. It was for this work that the executive branch of government was created, and courts should not assume to interfere except in the clearest cases of illegality wherein, of course, would be raised a question of law. The immigration cases belong under this heading, for it is part of the business of government to determine who shall be admitted to this country. It may be said that no expert knowledge is required in finding the fact of the place of an immigrant's birth, and yet it is a finding logically committed to immigration officials. Congress has gone so far as to provide that such findings when made by these administrative officials shall be conclusive, notwithstanding

11. Thomas Reed Powell, Political Science Quarterly, XXVIII, p. 47 (1913).

12. Knight vs. United Land Association, 142 U. S. 161 (1891).

13. Newhall vs. Sanger, 92 U. S. 761 (1875).

14. State Railroad Tax Cases, 92 U. S. 575 (1875).

it is essentially a jurisdictional fact, and the Supreme Court upheld this statutory exclusion of court review.[15] It is submitted that this provision and holding are in accord with sound policy. Courts cannot add anything of value here. All of these situations are more or less directly related to the very maintenance of government. Prompt and efficient action are called for. There is no basis for turning over each case to a judicial tribunal for the working out or application of some settled rule. Administrative action is the appropriate type. The business of government must be carried on effectively, even though a court might disagree with the conclusions reached by those charged with the duty of acting on the facts before them.

b. *Notice and Hearing.* Since these boards are functioning in that realm of necessarily arbitrary powers of government, it seems clear that there is no requirement of notice and hearing for the individuals affected, unless, of course, statute expressly so provides. This statement may be qualified in the immigration cases, since there a degree of personal freedom is involved, but even here the formal requirements incident to court procedure should not be rigidly enforced, for "prompt and vigorous action" is contemplated, as stated by the Supreme Court in one such case.[16] This seems sound, because all such vital executive action should be unhampered as far as possible. The tendency of later Supreme Court decisions in immigration cases has been to review where a fair hearing has been arbitrarily denied the immigrant,[17] and it may well be that a demonstrated tendency toward arbitrary action on the part of immigration officials makes necessary court review in this particular kind of case.

3. *Bodies set up to function in situations wherein government is seeking to perform some business service for the public.* Examples of such administrative authorities are those dealing with the post office, publicly operated railroads, power and water works, and other public utilities conducted through governmental agencies.

a. *Discretion.* It must be observed that in such situations government has a monopoly enforced by law (as in the case of the post office) or one which naturally results when government enters a particular business field (as in the case of T.V.A.). In all such cases there is opportunity for official oppression. If the administrative authorities are to be left free to conduct these businesses according to their personal judgments, then the public is at their mercy. This is a field in which administrative action is on a steady increase. To treat executive discretion as binding may well result in creating an intolerable situation wherein all the evil influences of political activity may come into play. Here the courts, by their very nature, can safeguard the public interest against the inherent weaknesses of administrative authority. It is submitted, therefore, that in this class of cases, the discretion of officials working for government in the field of private business should be subjected to the same degree of judicial review as is applied to private public utilities hereinafter considered. Rates must be reasonable, rules and regulations must be reasonable and reasonably enforced, and discrimination must be prevented.

b. *Notice and Hearing.* Where an individual or group of individuals is directly affected by a ruling of the administrative authorities here being considered, it would seem that notice and hearing ought to be required except in a few cases where prompt action is essential. A ruling of the Postmaster General may spell ruin to a legitimate enterprise which is made to suffer without even an opportunity to present its side. On the other hand, there are cases where clear and palpable fraud may be consummated unless a fraud order may be issued without an hour's delay; in such instances notice and hearing would nullify the very purpose of the order. With respect to other government operated utilities, it seems that no notice and hearing should be required as a prerequisite to the issuance of general rules and regulations, these being in the nature of legislative acts. However, where the ruling is not general, but is directed solely against one individual or one special group of individuals, then "regularity" would seem to require notice and hearing. The direct interest of the individuals thus affected should be safeguarded by court review on this vital point, for the same reasons stated above in regard to administrative discretion in such cases.

4. *Bodies set up to function in situations wherein government is seeking to regulate business affected with a public interest.* Examples of such administrative authorities are the well known public utility commissions.

a. *Discretion.* Regulation of public utilities, in order to be effective, should allow of an exercise of discretion not subject to court review where there is any substantial evidence to sustain the findings of the board. This applies to rates (subject to later qualifications), service and discrimination. In this field all the beneficial attributes of administrative action are called for. Continuous expert attention is needed, legislative as well as quasi-judicial action is necessary for the laying down of rules governing future conduct, promptness of action is essential, the working out of a policy based on a broad perspective is highly desirable, and the ability to act without the necessity of a complaining party is of utmost importance. To permit court review of administrative discretion in this type of case and to allow a court to substitute its view for that of the commission adds nothing of value, but destroys all the salutary effects of administrative control.

We now approach the most difficult problem in the entire field which is presented when a utility complains of a rate that has been established by a commission, upon the ground that it is confiscatory and hence unconstitutional. The utility is entitled to a reasonable return on the value of its property devoted to the business. To deny it such a return, being forced as it is to continue to render service to the public, is construed as virtual confiscation of its property contrary to due process. Shall the court be permitted to review this controversy as one based on a question of law, or shall the rate and the valuation on which it is predicated be sustained as a finding of fact if there be substantial evidence to support the commission's action? The controversy revolves around the question of "value" in such a case, and whether it be one subject to review because of the constitutional implications involved. It is the doctrine of the United States Supreme Court that in such a case the court will review the evidence and determine according to its own judgment what is a proper valuation.[18] This holding of the Supreme Court has been severely criticized.[19] The gist of the reasoning behind the holding is stated by Chief Justice

15. United States vs. Ju Toy, 198 U. D. 253 (1905).
16. Yamataya vs. Fisher, 189 U. S. 86 (1903).
17. Kwock Jan Fat vs. White, 253 U. S. 454 (1920).
18. Ohio Valley Water Co. vs. Ben Avon Borough, 253 U. S. 287 (1920). St. Joseph Stock Yards Co. vs. United States (supra).
19. Landis, *op. cit. supra*, p. 128 ff.

Hughes in the St. Joseph Stock Yards case: "But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards." It is submitted that this reasoning is sound. Granted that courts are not experts in valuation, that delay and expense will be entailed by a re-valuation, and that some of the beneficial effects of rate regulation may be lost, still there is here a basic principle of constitutional right involved, and on this a court should pass, even though a question of fact is at the bottom of the inquiry. The critics, including Mr. Justice Brandeis,[20] insist that this holding of the court means according to the finding of an expert board less weight than is given to the finding of a jury in the ordinary case. There are several answers to this objection. One appears in the report of the Special Committee on Administrative Law of the American Bar Association submitted in 1936, where it is pointed out that the institution of the jury sprang from a desire to have issues of fact passed on by "independent umpires even further removed from control by the Executive than were judges."[21] In keeping with such a policy, it is no ground for objection that less weight is given to an administrative finding than is ordinarily given to a jury's verdict. Another answer is that merely because "valuation" is a question of fact should not preclude court review. Even Mr. Justice Brandeis, in his opinion already referred to, admits that review should be had on the constitutional questions of notice and hearing where such are essential to due process, and yet whether notice was given or whether a hearing was had may well be a pure question of fact in a particular case. The vital nature of these questions, wrapped up as they are in the determination of constitutional rights, demands that court review be allowed even though the inquiry involves an intricate question of fact. It is better here to sacrifice some of the benefits of administrative action than to preclude the courts from safeguarding constitutional rights. It may even be said that what in substance is here being determined by the courts is whether an erroneous rule of law has been applied in the regulatory process in the form of a confiscatory rate.

b. *Notice and Hearing.* In the promulgation of regulations and rates for the future, it may be said that a utility commission acts legislatively, and it is usually conceded that notice and hearing are not requisite to the constitutional validity of purely legislative action. However, the application of such reasoning must be limited to situations where the action of the administrative body applies generally and to a large number of persons for whom notice is impracticable. In the nature of things regulations of public utilities are in large measure personal, for there are few duplications of these services in a given territory. It follows that notice and hearing are generally practicable. Since a particular regulation or rate being considered will directly affect the rights and property of the utility in the territory involved, it comports with a proper sense of "regularity" that the one or several against whom the action about to be taken is directed should receive due notice with an opportunity to be heard, and such is the present law.[22] Nothing of value is lost in administrative action, if this requirement be imposed, while the courts can make a valuable contribution by insisting that these essentials shall characterize the proceeding. There is no such urgency involved in the matter of rates, service regulations and discrimination orders as to warrant discarding these features of "regularity." It follows that court review should here be permitted to insure their being observed.

5. *Bodies set up in situations wherein government is seeking under the police or other power to regulate private business and individuals.* Examples of such administrative authorities are those dealing with health, licensing, unfair competition, building operations, nuisances and a host of other matters affecting general welfare.

a. *Discretion.* The need for administrative action in these cases is clear, particularly promptness of action, coupled with an exercise of discretion without being bound by general rules, all of which we have seen characterizes this type of authority. On the other hand, such bodies are usually staffed by petty office holders at whose hands the individual citizen may likely find himself subjected to a species of tyranny. Such officials are judges of their own actions, frequently keeping no record of their proceedings and not subject to the public scrutiny generally visited upon the more important administrative tribunals. In an effort to solve the vexing problem of how far the exercise of discretion by such boards should be subject to court review, it has been suggested[23] that three situations must be considered: (1) those which require expert knowledge, (2) those which require summary action, and (3) those which require neither. There may exist various combinations of the three.

Illustrations of boards functioning in the first of these situations are to be found in the cases of condemnation of non-perishable goods, and the licensing of practitioners in the learned or technical professions. Here scientific knowledge is required, and in this the administrative authority is expert while the court is not. In such situations the discretion of the board ought not to be disturbed when there is any substantial evidence to support its conclusion reached in good faith on the facts before it. To substitute a court's view for that of the board would obviously result in positive harm. The court can make no contribution of value in the circumstances.

Similar reasoning applies in the class of cases where summary action is required, as where quarantine regulations are invoked, or perishable food is destroyed. To resort to court action, or to permit court review of such administrative discretion, either before or after action is taken, would nullify the very purpose of the statute. Courts by their nature are not fitted for these tasks. Whether an individual injured by erroneous exercise of discretion in such instances ought to be compensated out of the public treasury, is a question to be considered in some other place. For this inquiry it is sufficient to point out that the paramount benefits to the community of administrative action in such cases preclude allowing court review of the administrative discretion exercised, even at the cost of suffering by one or more individuals who may be harmed thereby.

In the third situation where neither expert nor

20. St. Joseph Stock Yards Co. vs. United States (supra), p. 73.

21. 61 American Bar Assn. Reports, p. 730 (1936).

22. Interstate Commerce Comm. vs. L. & N. R. Co., 227 U. S. 88 (1913).

23. Dickinson, Administrative Justice and the Supremacy of Law, p. 253 (1927).

summary action is required, the need for administrative action is not dominant, and the court can make a valuable contribution in a review of the facts to the end that oppression and injustice shall not result. Delay will do no harm, the processes of the court are suited to the inquiry, no question of general policy is involved. In fact, the most likely need is for protection of the individual against misguided, ignorant or oppressive administrative action.[24] Such cases arise under many modern statutes establishing licensing authorities for common non-technical occupations, and those authorizing administrative abatement of nuisances. In these and similar instances the affected party should have the right to show the actual facts to a court and obtain its judgment thereon, because of the recognized likelihood of injustice being perpetrated by over zealous or biased administrative officers.

What has just been said does not apply to a regulatory body such as the Federal Trade Commission, for with respect to that type of body an entirely different situation does exist. The Federal Trade Commission, for example, is an authority of high standing, naturally subject to public scrutiny, functioning much like a court, and presided over by officials of recognized ability who naturally become experts in the matter of trade practices and the results thereof. No reason can be discovered for authorizing court review of such a body's conclusions on questions of fact. No court can add anything here except to substitute its own view for that of the Board, and as heretofore pointed out when such is the bare result court review should be denied.

b. *Notice and Hearing.* Court review ought to be accorded in most of these cases on the matter of due notice and hearing in behalf of the party affected by such police and other regulations. Generally such regulatory action is directed against one individual or a small group of individuals, and thus notice and hearing are feasible. Liberty of action and property rights are being curtailed, and it is of the essence of justice that the party thus affected be afforded a fair hearing. Thus the courts can here by the process of review render the service of insuring the recognition of these rights. The only qualification of this view is to be made in the situations where summary action is essential. Here notice and hearing would result in rendering nugatory the regulation sought to be imposed. Because of the strong need for police regulation in such cases, notice and hearing should be dispensed with, and accordingly court review on such ground denied.

c. *Legislative Action.* Much of this type of police regulation is by way of rules or regulations governing future action and promulgated under general statutory authority to fill in the gaps. As indicated elsewhere such rules of a general nature are properly regarded as legislative in character and do not have to be supported by evidence nor made after notice or hearing, hence there should be no court review on these grounds. Where the effect of the regulation is to deprive the complaining party of some legal right not subject to being thus taken away, it is evident that in such case a question of law, either statutory or constitutional, is being raised and hence court review is proper under the general rule already dealt with. Of course, a situation may be encountered, as may have been the case with respect to the new Food, Drug and Cosmetic Act already referred to, where administrative legislative regulations affecting large interests engaged in interstate commerce are regarded as of such consequence that court review thereof is provided for. Obviously, this is the unusual case, and can be justified only on the ground that the magnitude of the private interests involved demands the added protection of judicial review.

6. *Bodies set up to function in situations wherein government is seeking to adjust individual controversies because of some strong social policy involved.* Examples of this kind of administrative authority are those dealing with workmen's compensation and labor relations.

a. *Discretion.* Such administrative bodies sit more nearly in the position of a court than do any of the others heretofore considered, since they undertake in large part at least to determine controversies between individuals. The justification for injecting administrative authority into these private controversies is because something more is involved than the mere claims of the contesting parties. Society is materially interested in the prompt, efficient and expert settlement of such controversies, for obvious reasons unnecessary here to mention. This is a sound policy and one that the constituted authorities should be permitted to work out with a minimum of court review, despite the fact that courts have long functioned in their own way in these fields. It follows that court review should not be allowed in regard to facts found by such boards where there is any substantial evidence to sustain these findings. Courts are not equipped to work out the social policy in view, and to allow them to substitute their own findings for those of these boards would directly defeat the very purpose of the statutes. This reasoning is supported by the current authorities.[25]

A more difficult problem is presented where the facts found by the administrative body are such as are essential to its having jurisdiction over the controversy. The United States Supreme Court and most authorities follow the view that such facts are subject to court review and to independent findings by the court.[26] To permit court review here tends to keep the administrative agency within the legal bounds of its activity, but at the same time to hamper it in the attainment of its proper objectives. To deny court review makes the administrative body final judge of its own jurisdiction, and renders possible an overreaching into fields never intended to be included. Which alternative to choose must be determined by balancing the advantages of having this kind of administrative action unhampered by court review on the facts of jurisdiction, against the advantage of having courts restrict such administrative bodies to their lawful bounds in assuming control over these types of private controversies. The scales would seem to be rather evenly balanced, but it must be borne in mind that these are situations where administrative authority is being thrust into the region of private litigation of private rights. Surely the thrust should go no farther than it is authorized to go. Those tribunals which are being displaced thereby ought to be the judges of how far such authority lawfully extends and when it is operative. It is safer that the invader should not be the judge of the extent of his own invasion. In this type of case, therefore, where private parties are being kept from resorting to an ordinary court, and are forced to submit their private rights

24. See Goodnow, 41 American Bar Assn. Reports, p. 256 (1916)

25. In re Burns, 218 Mass. 8 (1914).

26. Crowell vs. Benson, 285 U. S. 22 (1932); Consolidated Edison Co. vs. N. L. R. Board, 59 Sup. Ct. Rep. 296 (1938); Borgnis vs. Falk, 147 Wisc. 327 (1912).

to an administrative body for adjudication, court review ought to obtain with respect to the jurisdictional facts. As Mr. Justice Brandeis complains in his dissent in Crowell vs. Benson (supra), this holding may at times operate to the disadvantage of the poor litigant and in favor of the wealthy, but the answer is that the weaknesses of the administrative process render court review essential at this point despite the inconvenience that may at times result therefrom to certain individuals.

b. *Notice and Hearing.* The very fact that these proceedings are in the nature of judicial adjudications of private controversies renders all the more imperative that the parties be accorded due notice and a fair hearing. To dispense with these would serve no useful purpose in promoting the administrative policy in view, but would mean sacrificing the fundamental elements of fairness. The vital importance of these, from the point of view of the individuals involved, makes court review a proper and desirable safeguard.

It has not been feasible within the narrow limits of this article to include a detailed consideration of court review of decisions of administrative bodies with respect to the exclusion or admission of evidence. Wherever findings of such bodies are required to be supported by substantial evidence, the safe policy requires evidence that is unobjectionable on any ground other than what amounts to bare technicality. This test will give proper leeway to both administrative action and judicial safeguards.

All of the foregoing discussion leads to the following conclusions:

1. There is no uniform rule applicable to administrative bodies generally that will satisfactorily govern in determining the proper extent of court review of the decisions of such bodies.

2. There is a sound principle that will serve as a guide in determining when court review of decisions by administrative bodies should be allowed, which may be stated as follows: court review should be provided where the inherent weaknesses of the administrative process can be remedied by the superior qualities of the judicial process.

3. In applying this principle regard must be had for the nature of the functions of the administrative body involved, in balancing the advantages and disadvantages of making its actions final or having them subject to court review.

4. There are certain respects in which court action is superior to administrative action in all cases, and as to these judicial review should always be permitted:

a. Decisions on pure questions of law, including the determination of whether findings of fact are supported by any substantial evidence where this requirement is the appropriate test for sustaining such findings.

b. Decisions on questions affecting constitutional rights, even though they turn on factual determinations.

c. Decisions on questions relating to regularity and fairness of procedure.

5. There are situations in which court action is superior to administrative action because of peculiar defects inherent in the administrative process, and at such points court review should be provided, otherwise administrative decisions should stand.

These conclusions are but an application of the rule as stated by Mr. Justice Brandeis and quoted at the beginning, with a somewhat broader scope given to the meaning of "regularity" than that eminent jurist has been willing to concede.

EDITOR'S NOTE: We publish the 1939 winning Ross Prize Essay herewith in full, including the footnotes. The formal bestowal of the award and the $3,000 prize will take place before the Assembly, at the Annual Meeting in San Francisco. An account of this year's competition, with a sketch and photograph of the recipient of this notable prize, are published elsewhere in this issue. In subsequent issues, the Journal will print several other essays from this year's competition—essays which have great merit but did not receive the award. Together this series of essays by noted scholars and practitioners will constitute an outstanding symposium of varied views upon this year's vital topic, and will greatly advance the purpose of the bequest in the will of the late Judge Erskine M. Ross, of California, who sought to encourage an annual contribution by the American Bar Association to the enlightened discussion of some subject of great importance to the public and to the profession.

Administrative Law Bill Gets Unanimous Favorable Report

THE Senate Committee on the Judiciary has made a favorable and unanimous report on the Administrative Law Bill. The measure as reported differs from Senator Logan's original Bill (S. 915) principally in the elimination of the provision that the United States Supreme Court make uniform rules for practice and procedure.

The Senate Report gives the arguments for the measure which Chairman McGuire has advanced so cogently and says:

"It has not been possible to draft an administrative law bill which would be entirely satisfactory to everyone, but it is doubtful if there has been legislation proposed in a century which has had more extended and careful study than that given to this bill. It was under consideration for more than 3 years by the American Bar Association and the principles thereof have been approved by the Board of Governors and the House of Delegates of that association and by the State bar associations of California, Colorado, Illinois, Nebraska, Ohio and Oregon as well as by the city bar associations of Boston, Chicago, Cleveland, Dallas, and St. Louis. . . .

"The object of all concerned has been to leave the administrative agencies as free as possible to function consistent with the supremacy of the law and to provide only such judicial review as is necessary to insure both the supremacy of the law and substantial justice in controversies between the United States and individuals. Of course, much of the success of the reform will depend upon the able and wise use made by the administrative agencies of the power conferred upon them by this proposed legislation as well as upon the restraint and ability of the courts in their exercise of their reviewing jurisdiction. However, it is believed that we may safely trust this matter to the wisdom of all concerned to the end that there may be developed in this country a body of administrative law in accordance with the received common-law traditions with both the administrative agencies and the courts jealously concerned to remain within their respective allotted spheres—both being anxious to interpret and apply the constitutional statutes as enacted by the elected representatives of the people."

PROGRAM FOR SIXTY-SECOND ANNUAL MEETING

Assembly

FIRST SESSION

Monday, July 10, 10:00 A. M.

Opera House

The President, Presiding.

Call to Order.

Greetings from the San Francisco Bar by Honorable Hartley F. Peart, President of the Bar Association of San Francisco.

Annual Address of the President of the American Bar Association.

Opportunity for the offering of resolutions pursuant to Article IV, Section 2 of the Constitution.

Report of Committee on Survey of Work of Sections and Committees, Frederick H. Stinchfield, Chairman (to be continued to next session if not concluded by 12:00 o'clock).

Amendments to Constitution and By-Laws.

Announcement by the Secretary as to vacancies, if any, in the offices of State Delegates and Assembly Delegates.

Election of Assembly Delegates to fill vacancies.

Adjournment, 12:30 P. M.

House of Delegates

FIRST SESSION

Monday, July 10, 2:00 P. M.

Veterans' Building

The President, Presiding.

Roll Call.

Report of the Committee on Credentials and Admissions, Morris B. Mitchell, Chairman, State Delegate from Minnesota.

Approval of the Record.

Statement of the Chairman of the House of Delegates, Thomas B. Gay, Richmond, Virginia.

Election of Members of the Board of Governors, as prescribed by the Constitution, Article VIII, Section 3.

Report of the Secretary, Harry S. Knight.

Report of the Treasurer, John H. Voorhees.

Report of the Committee on Rules and Calendar, Guy Richards Crump, Chairman, State Delegate from California.

Report of the Board of Governors to the House of Delegates, Harry S. Knight, Secretary.

Offering of Resolutions for reference to the Committee on Draft.

Reports of Committees:

Admiralty and Maritime Law, Ira S. Lillick, Chairman, San Francisco, California.

Aeronautical Law, Mabel Walker Willebrandt, Chairman, Washington, D. C.

American Citizenship, Ralph R. Quillian, Chairman, Atlanta, Ga.

Sesquicentennial Celebration, J. Harry LaBrum, Chairman, Philadelphia, Pennsylvania.

Communications, John W. Guider, Chairman, Washington, D. C.

State Legislation, William A. Schnader, Chairman, Philadelphia, Pennsylvania.

Amendments and Legislation Relating to Child Labor, Kenneth M. Spence, Chairman, New York City.

Judicial Salaries, Walter S. Foster, Chairman, Lansing, Mich.

Judicial Selection and Tenure, John Perry Wood, Chairman, Los Angeles, California.

Bar Journal Advertising, Fred B. H. Spellman, Chairman, Alva, Oklahoma.

Assembly

SECOND SESSION

Wednesday, July 12, 10:00 A. M.

Opera House

The President, Presiding.

Nomination and election (by ballot) of five Assembly Delegates to the House of Delegates.

Statement concerning the work of the American Law Institute by Orrin K. McMurray, Berkeley, California.

Report by the Chairman of the House of Delegates (or the Secretary) as to matters requiring action by the Assembly.

Report of Special Committee on Bill of Rights, Grenville Clark, Chairman, New York City, followed by forum discussion of the subject.

House of Delegates

SECOND SESSION

Wednesday, July 12, 2:00 P. M.

Veterans' Building

The Chairman, Presiding.

Roll Call.

Reading and Approval of the Record.

Unfinished Business.

Reports of Committees:

Federal Taxation, George Maurice Morris, Chairman, Washington, D. C.

Privileged Communications, Frank J. Wideman, Chairman, Washington, D. C.

Securities Laws and Regulations, John J. Burns, Chairman, Boston, Massachusetts.

Customs Law, Albert MacC. Barnes, Chairman, New York City.

Jurisprudence and Law Reform, Walter P. Armstrong, Chairman, Memphis, Tennessee.

Administrative Law, O. R. McGuire, Chairman, Arlington, Va.

Proposals Affecting the Supreme Court and Other Courts of the United States, Sylvester C. Smith, Jr., Chairman, Newark, New Jersey.

Labor, Employment and Social Security, William L. Ransom, Chairman, New York City.

Facilities of the Law Library of Congress, Charles H. Leavy, Chairman, Spokane, Washington.

Report of the Section of Judicial Administration and Report as to the work of State Committees on Procedural Reform, Henry T. Lummus, Chairman, Boston, Massachusetts.

Assembly

THIRD SESSION

Wednesday, July 12, 8:30 P. M.

Opera House

The President, Presiding.

Presentation of Memorial to Hon. Robert E. Lee Saner, one-time President of American Bar Association, by Mr. David A. Simmons, of Texas.

Award of American Bar Association Medal.

Address by a distinguished guest of the Association.

10 P. M.

Palace Hotel

President's Reception—Dancing—Refreshments.

Assembly

FOURTH SESSION

Thursday, July 13, 10:00 A. M.

Opera House

The President, Presiding.

Presentation of Prize Award for 1939 Ross Bequest Essay to Professor Malcolm McDermott, Law School, Duke University, Durham, North Carolina.

OPEN FORUM ON PREPARATION AND PRESENTATION OF CONTESTED MATTERS UNDER LABOR RELATIONS AND FAIR LABOR STANDARDS ACTS

Honorable William L. Ransom, Chairman of the Standing Committee on Labor, Employment, and Social Security, Presiding

"Practical Suggestions for the Handling of Questions Arising Under the Wage-and-Hours Law," Honorable Calvert Magruder, Judge of the United States Circuit Court of Appeals for the First Circuit; lately General Counsel of the Wage-and-Hours Administration.

"The Preparation and Trial of Cases Before the National Labor Relations Board," Honorable Charles Fahy, General Counsel of the National Labor Relations Board.

Opportunity for questions and discussions from the floor will follow.

Report of the Resolutions Committee.

House of Delegates

THIRD SESSION

Thursday, July 13, 2:00 P. M.

Veterans' Building

The Chairman, Presiding.

Roll Call.

Reading and Approval of the Record.

Unfinished Business.

Report to the House of Delegates of Resolutions Adopted by the Assembly for Action by the House of Delegates.

Consideration of Assembly Resolutions.

Reports of Committees:

Legal Aid Work, John S. Bradway, Chairman, Durham, N. C.

Legal Clinics, Karl N. Llewellyn, Chairman, New York City.

Economic Condition of the Bar, William A. Roberts, Washington, D. C.

Public Relations, Philip J. Wickser, Chairman, Buffalo, N. Y.

Professional Ethics and Grievances, H. W. Arant, Chairman, Columbus, Ohio.

Unauthorized Practice of the Law, Henry B. Brennan, Chairman, Savannah, Georgia.

Survey of Work of Sections and Committees, Frederick H. Stinchfield, Chairman, Minneapolis, Minnesota.

Noteworthy Changes in Statute Law, Robert S. Stevens, Chairman, Ithaca, New York.

Commerce, Donald R. Richberg, Chairman, Washington, D. C.

Cooperation Between the Press, Radio and Bar as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings, Giles J. Patterson, Chairman, Jacksonville, Florida.

Legal Publications and Law Reporting, James E. Brenner, Chairman, Stanford University, California.

Law Lists, Frank E. Atwood, Chairman, Jefferson City, Missouri.

Reports of Sections:

Junior Bar Conference, Ronald J. Foulis, Chairman, St. Louis, Missouri.

Legal Education and Admissions to the Bar, R. G. Storey, Chairman, Dallas, Tex.

Municipal Law, Henry P. Chandler, Chairman, Chicago, Illinois.

Annual Dinner

Thursday, July 13, 7:30 P. M.

Palace Hotel

The President, Presiding.

Speakers:

Honorable James F. Byrnes, United States Senator from South Carolina.

Mr. R. L. Maitland, K. C., representative of the Canadian Bar Association.

Mr. Stephen F. Chadwick, National Commander of the American Legion.

House of Delegates

FOURTH SESSION

Friday, July 14, 9:00 A. M.

Veterans' Building

The Chairman, Presiding.

Roll Call.

Reading and Approval of the Record.

Unfinished Business.

Reports of Sections:

Bar Organization Activities, R. Allan Stephens, Chairman, Springfield, Illinois.

Commercial Law, Jacob M. Lashly, Chairman, St. Louis, Missouri.

Criminal Law, James J. Robinson, Chairman, Bloomington, Indiana.

Insurance Law, Lionel P. Kristeller, Chairman, Newark, N. J.

International and Comparative Law, William Roy Vallance, Chairman, Washington, D. C.

Mineral Law, Stanley B. Houck, Chairman, Minneapolis, Minn.

National Conference of Commissioners on Uniform State Laws, Alexander Armstrong, President, Baltimore, Maryland.

Patent, Trade-Mark and Copyright Law, Thomas E. Robertson, Chairman, Chevy Chase, Maryland.

Public Utility Law, Harold J. Gallagher, Chairman, New York City.

Real Property, Probate and Trust Law, George E. Beers, Chairman, New Haven, Connecticut.

Presentation of any matters which any state or local bar association or any affiliated organiza-

tion of the legal profession wishes to bring before the House of Delegates.

Presentation of any matters which any Section or Standing or Special Committee of the Association wishes to bring before the House of Delegates.

Report of the Committee on Hearings, Charles M. Thomson, Chairman, State Delegate from Illinois.

Report of the Committee on Draft, George H. Smith, Chairman, State Delegate from Utah.

Report of the Board of Elections, Hon. Edward T. Fairchild, Chairman, of Wisconsin.

Report of Committee on Credentials and Admissions, Morris B. Mitchell, Chairman, Minneapolis, Minnesota.

Unfinished Business.

New Business.

(The President in the Chair)

Statement of certification of nominations for officers, Harry S. Knight, Secretary.

Election of Officers.

Presentation of newly elected Officers and Members of the Board of Governors.

Remarks by Incoming President.

Adjournment.

Assembly

FIFTH SESSION

Friday, July 14

Upon adjournment of House of Delegates.

Veterans' Building

Report by Chairman of House of Delegates as to Action of House upon resolutions previously adopted by Assembly.

Action by Assembly upon any resolutions previously adopted by the Assembly but disapproved or modified by the House.

Unfinished Business.

New Business.

Adjournment.

Open Forum Committee Meetings

COMMITTEE ON FEDERAL TAXATION

Tuesday, July 11, 10:00 A. M.

Veterans' Building

FEDERAL TAX CLINIC

George Maurice Morris, Chairman, Presiding.

(Speakers and subjects to be announced later).

Luncheon, 12:30 P. M.

Mark Hopkins Hotel

Luncheon to be followed by the Second Session of the Federal Tax Clinic.

STANDING COMMITTEE ON LEGAL AID WORK

Monday, July 10, 6:30 P. M.

Tapestry Room, Palace Hotel

Topic for discussion: *"The Survey of the Need for Legal Aid Work."*

The presiding officer will be Christopher M. Bradley, of the San Francisco Bar, President of the Legal Aid Society of San Francisco, who will speak briefly on the subject of Legal Aid Work. He will be followed by Edmund Ruffin Beckwith, of the New York Bar, Secretary of the Legal Aid Committee. His topic will be *"The Survey in New York City,"* which he is now organizing and developing.

Thereafter the discussion will be informal and all persons interested are invited.

CONFERENCE COMMITTEE ON ADJUSTERS

Wednesday, July 12, 2:00 P. M.

Veterans' Building

Oscar J. Brown, Chairman, presiding.

Section of Bar Organization Activities

Third Annual Meeting

Tuesday, July 11, 9:30 A. M.

Veterans' Building

R. Allan Stephens, Chairman, presiding.

FIRST SESSION

Report of Chairman.

Appointment of Nominating Committee.

Roll Call.

Reports of Committees:

Voluntary State Bar Administration, W. Wallace Fry, Mexico, Missouri, Chairman.

Integrated State Bar Administration, Roscoe O. Bonisteel, Ann Arbor, Michigan, Chairman.

Local Bar Association Administration, Joe V. Williams, Jr., Chattanooga, Tennessee, Chairman.

State Bar Integration, Edmund B. Shea, Milwaukee, Wisconsin, Chairman.

Publications, Claude Minard, San Francisco, California, Chairman.

Public Relations, William Doll, Milwaukee, Wisconsin, Chairman.

Judicial Councils, Alfred J. Schweppe, Seattle, Washington, Chairman.

Fees and Schedules of Charges, Henry C. Warner, Dixon, Illinois, Chairman.

Program Committee, Raymer F. Maguire, Orlando, Florida, Chairman.

CONFERENCE ON TECHNIQUES OF LOCAL BAR ASSOCIATION ACTIVITIES

(Topics to be selected by members of the group from the following or other suggested subjects.)

HOW TO INTEREST LAWYERS IN BAR ORGANIZATIONS.

Through Social Activities.

Regular Meetings—Weekly, Monthly—Luncheon, Dinner.

Informal Meeting Programs.

Amateur Nights—Gridiron Shows.

Ladies Nights—Dancing and Entertainment.

Recreation Programs.

Indoors—Bowling, Motion Pictures, Non-Legal Speakers.

Outdoors—Golf, Trap Shooting, Hiking, Picnics.

Wives' Clubs.

Bring ladies together socially, Lawyers Aides.

Through Practical Service and Recognition.

Uniform Schedule of Fees and Charges.

Community Law Libraries.

Cooperative Purchase of Law Books and Services.

Uniform Rules for Title Examination.

Local Bar Publications.

Discussion of Pending Legislation.

Discussion of Practice Problems.

Discussion of Judicial Decisions.

Advanced Legal Education Discussions.

Recognition and Assistance of Young Lawyers.

Recognition of Veterans.

Recognition of Public Officials.

Assistance to Older Lawyers through Pension Fund.
Memorial Services.

HOW TO INTEREST THE PUBLIC IN LOCAL BAR ORGANIZATIONS.

Through Public Relations Programs.
Public Meetings to discuss Local Issues.
Providing Speakers for Lay Organizations.
Cooperation in American Citizenship Work.
Cooperation as an organization in Civic, Patriotic, Educational and Charitable campaigns.
Newspaper and Radio Publicity.
Vocational Guidance in High Schools.
Joint Professional Meetings.

Through Improvement of Judicial Administration.
Revision of Local Rules of Court.
Bar Primaries on Judicial Candidates.
Unauthorized Practice of Law Campaigns.
Legal Aid for Indigent Clients.
Instruction Courses for Law Enforcement Officials.
Cooperation as an organization in Crime Prevention and Juvenile Delinquency campaigns.
Grievance Committees to maintain high standards.

HOW TO COOPERATE WITH THE STATE BAR ASSOCIATION.

Appoint representatives to each of the Sections.
Appoint delegates to attend Annual and other meetings.
Reduced membership fee arrangement for 100% affiliation by local members.
Surveys of local conditions.
State officers as program speakers.
Recommendations for action by the State Bar Association based on local bar research and study.
Publicity in State Bar Association Journal.
Cooperation with State Grievance Committee.
Assistance in locating Pension Fund eligibles.

HOW TO COOPERATE WITH OTHER LOCAL ASSOCIATIONS.

Exchange Meetings with Neighboring Counties.
Working together on mutual problems such as Bar Primaries, Uniform Rules of Court, Title Examination Methods, Uniform Rules of Court, Title Examination Methods, Unauthorized Practice of Law.
District Federations meeting by Judicial Districts with Delegates from affiliated local associations.

HOW TO COOPERATE WITH THE AMERICAN BAR ASSOCIATION.

Ideas to be found in monthly Bar Executive publication.
Appointing representatives for each pertinent Section.
Reports of members on Annual and other meetings.
Contacts through *American Bar Association Journal.*
Local Surveys and research.
State Delegates and section representatives as program speakers.

SECOND SESSION
2:00 P. M.
Veterans' Building

CONFERENCE ON TECHNIQUE OF STATE BAR ASSOCIATION ACTIVITIES

(Topics to be selected by members of the group from the following or other suggested subjects).

Annual Meetings.
Different forms of District and Circuit Organizations.
Employment Services.
Fees Schedules.
Handling Grievances.
Judicial Administration.
Ladies Auxiliaries.
Law Books and Libraries.
Law School Associations.
Legal Aid.
Legal Registers.
Office Form Scrapbooks.
Pension Funds.
Post Admission Legal Education Methods.
Preventing Unauthorized Practice.
Publicity.
State Bar Association's Publications.
Younger Members' Activities.
Election of Officers.
Unfinished Business.

Section of Commercial Law

Tuesday, July 11, 9:30 A. M.
Veterans' Building

Jacob M. Lashly, Chairman, Presiding
Report of Chairman.
Presentation of Minutes of Cleveland Meeting.
Business and Parliamentary Matters.
Election of Officers.

10:30 A. M.

CHANDLER LAW INSTITUTE

Reorganizations; John Gerdes of New York, Discussion leader. Benjamin Wham, Giles J. Patterson, Israel Treiman, and Francis R. Kirkham, members of the Committee, will assist in the discussion.

Open hour,—questions or observations from those in attendance.

12:30 P. M.

SECTION LUNCHEON
Empire Hotel

Jacob M. Lashly, Chairman, Presiding
Walter Chandler, Congressman from Tennessee, sponsor of the Chandler Act, speaker.

2:15 P. M.
Veterans' Building

CHANDLER LAW INSTITUTE—resumed

Bankruptcy Liquidations; Garrard Glenn, of the Law Department of the University of Virginia, Discussion leader.

Martin J. Dinkelspiel, Randolph Montgomery, Carl D. Friebolin, and William B. Layton, members of the Committee, will assist in the discussion.

Function of the Securities and Exchange Commission in Reorganizations; Jerome N. Frank, Member of the Commission.

Open Hour—General Discussion.
Announcements.
Adjournment.

Section of Criminal Law

MONDAY, JULY 10, 7:00 P. M.
Palace Hotel

DINNER UNDER JOINT AUSPICES OF THE SECTION OF CRIMINAL LAW OF THE AMERICAN BAR ASSOCIATION, AND THE INTERSTATE COMMISSION ON CRIME

James J. Robinson, Chairman, Section of Criminal Law, Presiding.

Representing the American Bar Association: President Frank J. Hogan.

Representing the Interstate Commission on Crime: President Richard Hartshorne.

Address: Honorable Frank Murphy, The Attorney General of the United States.

TUESDAY, JULY 11, 8:30 A. M.

Breakfast Conference: Officers, Council Members and Committee Chairmen of Section.

10:00 A. M.
Veterans' Building
FIRST SESSION

Report of Chairman.

Report of Secretary.

"The Attorney General's Survey of Release Procedures," Dean Wayne L. Morse, Chairman, Committee on Sentencing, Probation, Prisons and Parole.

Address: Warden James A. Johnston, Alcatraz Penitentiary.

Statements by Committee Chairmen, or other representatives, of the Section Committees on:

Education and Practice, Cornelius W. Wickersham, New York City, Chairman.

Federal Election Laws, Arthur J. Freund, St. Louis, Mo., Chairman.

Magistrates and Traffic Courts, George A. Bowman, Milwaukee, Wis., Chairman.

Police Training and Merit Systems, Judge Curtis Bok, Philadelphia, Pa., Chairman.

2:00 P. M.
Veterans' Building
SECOND SESSION

Report of Committee on Supreme Court Rules for Criminal Procedure, Arthur T. Vanderbilt, Newark, New Jersey, Chairman.

"Practical Advantages of Rules of Court for Criminal Procedure," Roscoe Pound, Harvard Law School.

"Legislation and Rule-Making in Criminal Procedure," Hon. Walter Chandler, Congressman from Tennessee.

Discussion by Committee Members present—
Judge John J. Parker, Charlotte, N. C.;
Hon. Homer S. Cummings, Washington, D. C.;
Professor Wilbur H. Cherry, Minneapolis, Minn.; or other members of the Committee who are present.

Statements by Committee Chairmen, or other representatives, of the Section Committees on:

Procedure, Prosecution and Defense, Judge W. McKay Skillman, Detroit, Mich., Chairman.

Rating Standards and Statistics, Hon. Dan W. Jackson, Houston, Texas, Chairman.

Public Information, Radio and Press, Hon. Gordon E. Dean, Washington, D. C., Chairman.

8:00 P. M.
GENERAL PUBLIC SESSION

Hon. Earl Warren, Attorney General of California, Presiding.

Representing the Section of Criminal Law: Judge Curtis Box, Chairman of Committee on Police Training and Merit Systems.

Address: Director J. Edgar Hoover, Federal Bureau of Investigation, Department of Justice.

WEDNESDAY, JULY 12, 8:30 A. M.

Breakfast Conference: Officers, Council Members and Committee Chairmen of Section.

2:00 P. M.
THIRD SESSION
Veterans' Building

LEGAL INSTITUTE OF PRACTICE FOR FEDERAL AND STATE PROSECUTING OFFICERS

"The United States Attorney," by a representative of the Department of Justice or a United States Attorney.

"The State's Attorney," by Ralph E. Hoyt, District Attorney of Alameda County, California.

Completion of Business of Section.

An *Exhibit of Scientific Investigation* will be conducted jointly by the Federal Bureau of Investigation; the Department of Police, City of San Francisco; the International Association of Chiefs of Police; and other organizations, under the auspices of the Section of Criminal Law of the American Bar Association.

Section of Insurance Law

Monday, July 10
Veterans' Building
Lionel P. Kristeller, Chairman, Presiding
2:00 P. M.

Call to order.

Address of Welcome, by Francis V. Keesling, San Francisco, Cal.

Response by Lionel P. Kristeller, Newark, N. J., Chairman, Section of Insurance Law.

Address by Rex B. Goodcell, Insurance Commissioner of the State of California.

Report of Secretary, Howard C. Spencer, Rochester, New York.

Appointment of Nominating Committee.

Reports of Committees:

Membership, George J. Cooper, Detroit, Mich., Chairman.

Fraternal Insurance Law, Arthur W. Fulton, Chicago, Ill., Chairman.

Qualification and Regulation of Insurance Companies, Edwin W. Patterson, New York City, Chairman.

Lay Insurance Adjusters, E. Smythe Gambrell, Atlanta, Ga., Chairman.

Prospective Legislation, Philip Sterling, Philadelphia, Pa., Chairman.

Unauthorized Insurance Companies, Henry S. Moser, Chicago, Ill., Chairman.

Taxation of Insurance Companies, Edward M. Griggs, Chicago, Ill., Chairman.

Discussion of Committee reports by members (remarks limited to five minutes).

Address "Insurance Horse-Sense vs. Economic Non-Sense," by Alfred M. Best, New York City.

Address "Aviation and Insurance Law," by W. R. McKelvy, of Skeel, McKelvy, Henke, Evenson & Uhlmann, Seattle, Wash.

Tuesday, July 11
Veterans' Building
ROUND TABLE CONFERENCES
10:30 A. M.

Eight Round Table Conferences will be held in rooms to be assigned.

The specific program of each Conference follows:

ROUND TABLE I

Marine and Inland Marine Insurance Law, Robert E. Hall, Hartford, Conn., Chairman, presiding.

"The New York Insurance Law and Its Revision," by Archibald G. Thacher, of Barry, Wainwright, Thacher & Symmers, New York City.

A full discussion of the paper will be invited.

"Northwestern National Insurance Company of Milwaukee vs. Harry J. Mortensen, as Commissioner of Insurance," by Luther F. Binkley, of Ekren & Meyers, Chicago, Ill.

A full discussion of the paper will be invited.

ROUND TABLE II

Workmen's Compensation and Employers' Liability Insurance Law, Thomas N. Bartlett, Baltimore, Md., Chairman, presiding.

"Interpretation of Clause 1-B of the Standard Workmen's Compensation Policy," by Frank H. Durham, of Durham & Swanson, Minneapolis, Minn.

Discussion to be led by W. J. Jameson, of Johnston, Coleman & Jameson, Billings, Mont.

"Limits to 'In the Course of Employment' where Employees are Traveling, being Transported, etc.," by F. Britton McConnell, Los Angeles, Cal.

Discussion to be led by R. P. Wisecarver, San Francisco, Calif.

"Jurisdiction—when Federal or State Compensation Act Applies," by W. N. Mullen, San Francisco, Cal.

Discussion to be led by Douglass A. Campbell, Deputy Commissioner of the Industrial Commission of the State of California.

ROUND TABLE III

Health and Accident Insurance Law, V. J. Skutt, Omaha, Nebr., Chairman, presiding.

"Trend of Decisions on Accidental Means," by Miller Manier, of Manier & Crouch, Nashville, Tenn.

Speaker to lead discussion to be announced later.

"The Policy Exception, 'Violation of the Law,'" by Oliver H. Miller, of Miller & Ostrus, Des Moines, Iowa.

Discussion to be led by Wilbur E. Benoy, Columbus, Ohio.

ROUND TABLE IV

Automobile Insurance Law, Royce G. Rowe, Chicago, Ill., Chairman, presiding.

"The Occasional Commercial Use with Respect to an Automobile Covered for Business and Pleasure and Just What Constitutes Grounds for Denial," by Lasher B. Gallagher, Los Angeles, Calif.

Opportunity will be given for discussion.

"The Relation between Death Statutes and Automobile Guest Statutes," by Lowell White, Denver, Colo.

Opportunity will be given for discussion.

"Coverage under the Omnibus Clause," by Jewel Alexander, of Redman, Alexander & Bacon, San Francisco, Calif.

Opportunity will be given for discussion.

ROUND TABLE V

Casualty Insurance Law, Hugh D. Combs, Baltimore, Md., Chairman, presiding.

"The Liability of Fiduciaries for Negligence in the Operation and Maintenance of Property Belonging to Trusted Estates," by Walter S. Fenton, of Fenton, Wing & Morse, Rutland, Vt.

Opportunity will be given for discussion.

"Defense of Insurance Company Litigation under Reservation of Rights," by Percy W. McDonald, of McDonald & McDonald, Memphis, Tenn.

Opportunity will be given for discussion.

"Problems of Insurer Where It, or Insured, or Both, Desire to Appeal from Judgment in Excess of Policy Limits," by Gerald P. Hayes, of Bendinger, Hayes, Kluwin & Schlosser, Milwaukee, Wisc.

Opportunity will be given for discussion.

ROUND TABLE VI

Joint session of *Life Insurance Law* and *Fraternal Insurance Law,* John F. Handy, Springfield, Mass., Chairman of Life Insurance Law Committee, presiding, with whom will be associated Arthur W. Fulton, Chicago, Ill., Chairman of Fraternal Insurance Law Committee.

"Discussion of New Federal Rule 34," by Robert L. McWilliams, of Shelton, Gray & McWilliams, San Francisco, Calif.

Discussion to be led by Price H. Topping, of Guardian Life Insurance Company, New York City.

"Tax on Life Insurance Premiums is Wrong in Principle," by Arthur W. Fulton, of Fulton, Fulton & Sheen, Chicago, Ill.

Discussion to be led by Arthur E. Nelson, St. Paul, Minn., or Richard F. Allen, Topeka, Kan.

"Discussion of Federal Rule 35," by Joe B. Carrigan, of Carrigan, Hoffman & Carrigan, Wichita Falls, Texas.

Discussion to be led by Richard B. Montgomery, Jr., of Montgomery & Montgomery, New Orleans, La.

ROUND TABLE VII

Fire Insurance Law, Thomas Watters, Jr., Washington, D. C., Chairman, presiding.

"The Distinction between Direct and Indirect or Consequential Losses in Fire Insurance," by Neil Cunningham, Deputy Attorney General of the State of California, San Francisco, Calif.

Opportunity will be given for discussion.

"Variations of the Written Contract of Fire Insurance Arising out of Verbal Understandings," by James M. Guiher, of Steptoe & Johnson, Clarksburg, W. Va.

Opportunity will be given for discussion.

"Review of Fire Insurance Decisions During the Last Year," by Frank M. Drake, Louisville, Ky.

Opportunity will be given for discussion.

ROUND TABLE VIII

Fidelity and Surety Insurance Law, J. Harry Schisler, Baltimore, Md., Chairman, presiding.

"The Liability of Successive Sureties," by R. P. Wisecarver, San Francisco, Calif.

Opportunity will be given for discussion.

"Surety's Right of Subrogation in Connection with Forged Checks and Checks Bearing Forged Endorsements and Against Third Persons Contributing to the Loss," by Thomas E. Davis, San Francisco, Calif.

Opportunity will be given for discussion.

7:00 P. M.

Commercial Club

Annual Dinner—Entertainment.

Wednesday, July 12

Veterans' Building

2:00 P. M.

Reports of Committees:

Automobile Insurance Law, Royce G. Rowe, Chicago, Ill., Chairman.

Casualty Insurance Law, Hugh D. Combs, Baltimore, Md., Chairman.
Fidelity and Surety Insurance Law, J. Harry Schisler, Baltimore, Md., Chairman.
Fire Insurance Law, Thomas Watters, Jr., Washington, D. C., Chairman.
Marine and Inland Marine Insurance Law, Robert E. Hall, Hartford, Conn., Chairman.
Workmen's Compensation and Employers' Liability Insurance Law, Thomas N. Bartlett, Baltimore, Md., Chairman.
Health and Accident Insurance Law, V. J. Skutt, Omaha, Nebr., Chairman.
Life Insurance Law, John F. Handy, Springfield, Mass., Chairman.
Liaison Committee to Confer with National Association of Insurance Commissioners, Henry S. Moster, Chicago, Ill., Chairman.

Discussion of Committee reports by members (remarks limited to five minutes).

Address "Erie Railroad v. Tompkins—One Year After," by Dean Robert L. Stearns, University of Colorado, School of Law, Boulder, Colo.

Address (Subject to be announced later) by J. Purdon Wright, Baltimore, Md.

General discussion by members of Section (remarks limited to five minutes, except by unanimous consent).

Report of Nominating Committee and election of officers.

Introduction of new officers and adjournment.

Section of International and Comparative Law

Monday, July 10, 2:00 P. M.
Veterans' Building

SUBJECT: AERONAUTICAL LAW

Rights of Neutrals in Time of War, Howard S. LeRoy, Washington, D. C.

Belligerent Rights and Suppression of Bombing of Civilians, James W. Ryan, New York City.

International Regulation of Aviation in Time of Peace, Mabel Walker Willebrandt, Washington, D. C., and James E. Yonge, Miami, Florida.

Succession of Real Property in Totalitarian States, Walter M. Bastian, Washington, D. C.

Reports of Committees:
International and Comparative Law.
Aspects of Aeronautics, Shipping, and Telecommunication, Howard S. LeRoy, Washington, D. C., Chairman.
Membership, John P. Bullington, Houston, Texas, Chairman.
Publications, Louis G. Caldwell, Washington, D. C., Chairman.
Comparative Land Laws, Heber H. Rice, Washington, D. C., Chairman.

Tuesday, July 11, 10:00 A. M.
Veterans' Building

DIVISION OF COMPARATIVE LAW

Reports of Committees:
Teaching of International Comparative Law, James O. Murdock, Washington, D. C., Chairman.
Committee on Latin-American Law, Colonel William C. Rigby, Washington, D. C., Chairman.
Military and Naval Law, Colonel Hugh C. Smith, Washington, D. C., Chairman.
Simplification and Uniformity of Laws Governing Powers of Attorney among Countries of the Pan-American Union, David E. Grant, New York City, Chairman.
Comparative Law Relating to the Juridical Status of Women, Catherine L. Vaux, Washington, D. C., Chairman.
Comparative Housing Laws, H. Milton Colvin, Washington, D. C., Chairman.

DIVISION OF INTERNATIONAL LAW

"The Bristol Bay Fisheries Problem," Dr. Walter Bingham, Stanford University, California.

Tuesday, July 11, 2:00 P. M.
Veterans' Building

"International Enforcement of Treaty Obligations," Dean Edwin D. Dickinson, Berkeley, California.

"Maintenance of the 'Open Door' in China," George A. Finch, Washington, D. C., and William Cullen Dennis, Richmond, Indiana.

Reports of Committees:
Development of International Law through International Conferences, Dr. James Brown Scott, Washington, D. C., Chairman.
Pacific Settlement of International Disputes, Fred K. Nielsen, Washington, D. C., Chairman.
Restatement of International Law, William S. Culbertson, Washington, D. C., Chairman.
Nationality and Immigration, F. Regis Noel, Washington, D. C., Chairman.
Treaties and Agreements, Laurence D. Egbert, Washington, D. C., Chairman.

Wednesday, July 12, 2:00 P. M.
Veterans' Building

"Alien Land Laws," Hon. Justin Miller, Judge of the United States Court of Appeals for the District of Columbia.

Reports of Committees:
Limits of Territorial Jurisdiction, Carroll L. Beedy, Washington, D. C., Chairman.
Proposed Treaty Concerning Great Lakes-St. Lawrence Deep Waterway Project, Ralph G. Cornell, Silver Spring, Md., Chairman.
Law Relating to Protection of American Citizens and Their Property in Foreign Countries and on the High Seas, James W. Ryan, New York City, Chairman.
International Commercial Law, Prof. Philip W. Thayer, Cambridge, Mass., Chairman.
International Double Taxation, Mitchell B. Carroll, New York City, Chairman.
International Judicial Assistant, Prof. James Grafton Rogers, New Haven, Conn., Chairman.
International Law in the Courts of the United States, Edgar Turlington, Washington, D. C., Chairman.

Rights to Pacific Islands as Air Bases.

*Committee Reports will be limited to ten minutes and addresses to twenty minutes.

Section of Judicial Administration

Tuesday, July 11, 10:00 A. M.
Veterans' Building

Meeting jointly with National Conference of Judicial Councils.

Henry T. Lummus, Chairman of Section.
James W. McClendon, Chairman of Conference.

FIRST SESSION

1. Report of Committee on Simplification and Improvement of Appellate Practice and Procedure—Prof. Edson R. Sunderland, Chairman.
2. Report upon the National Conference of Judicial Councils—Arthur T. Vanderbilt, Chairman of the Board.
3. Address (subject to be announced)—Roscoe Pound, Director, National Conference of Judicial Councils.
4. Election of Officers of the Section and of the Conference.

SECOND SESSION—2:00 P. M.

1. Report of the Committee on Administrative Agencies and Tribunals, Ralph M. Hoyt, Chairman of Committee.
2. General discussion of the report.

Junior Bar Conference

Sunday, July 9

10:00 A. M.

Meeting of Officers and Council, Room F, *Empire Hotel*

12 Noon

Luncheon, Palace Hotel.

(Complimentary luncheon to members of Junior Bar Conference only by the President of the American Bar Association. Tickets must be secured at the Registration Desk.)

2 P. M.

FIRST GENERAL SESSION

Palace Hotel

Paul F. Hannah, Washington, D. C., Vice-Chairman, presiding.

Address of Welcome, James L. Feely, San Francisco, California.

Response, Weston Vernon, Jr., New York City, Past Chairman of the Conference.

Address by Frank J. Hogan, President of the American Bar Association.

Address by Honorable Robert H. Jackson, Solicitor General of the United States.

Report of Chairman, Ronald J. Foulis, St. Louis, Missouri.

Report of Secretary, Joseph Harrison, Newark, New Jersey.

Report of Committee on Rules.

FORMULATION OF PROGRAM FOR 1939-40

A. Formulation of program of objectives and activities.

1. Reports* and recommendations of Committees:
   - Director of Public Information, Milford Springer, Washington, D. C.
   - Restatement of Law, H. J. Cohen, Boston, Mass., Chairman.
   - Economic Survey, Francis P. Linneman, Chicago, Ill., Chairman.
   - Legislative Drafting, James A. Finch, Jr., Cape Girardeau, Missouri, Chairman.
   - Relations with Law Students, Frank F. Eckdall, Emporia, Kansas, Chairman.
   - Defense of Liberties Guaranteed by the Bill of Rights, Lewis F. Powell, Jr., Richmond, Virginia, Chairman.
   - Activities Committee, Paul F. Hannah, Washington, D. C., Chairman.
   - Sub-Committee on Small Claims, Robert E. Russell, Topeka, Kansas, Chairman.
2. Council recommendations to Conference.
3. Open discussion led by:
   - Joseph D. Calhoun, Media, Pa.
   - Paul B. DeWitt, Ann Arbor, Michigan.
   - James D. Fellers, Oklahoma City, Oklahoma.
   - George F. Guy, Cheyenne, Wyoming.
   - Mark H. Harrington, Denver, Colorado.
   - Ross L. Malone, Jr., Roswell, New Mexico.
   - William T. Muse, Richmond, Virginia.
   - John W. Oliver, Kansas City, Mo.
   - John J. Sirica, Washington, D. C.
   - Gerald E. White, Grand Rapids, Michigan.

B. Discussion of Methods and Techniques for Carrying out Conference Program.

Announcement of Personnel of Nominating Committee.

Report of Committee on Elections.

Adjournment at 5:00 P. M.

Monday, July 10, 8:00 A. M.

Banquet Room A, Empire Hotel

Breakfast given by Council Members for the State Chairmen.

2:00 P. M.

Veterans' Building

Open Hearings by Resolutions Committee.

4:00 P. M.

Private Dining Room 4, Empire Hotel

Meeting of Nominating Committee to Receive Nominations.

Tuesday, July 11

9:30 A. M.

SECOND GENERAL SESSION

Palace Hotel

Ronald J. Foulis, St. Louis, Missouri, Chairman, presiding.

Report of Resolutions Committee.

Continuation of discussion of program for the following year and methods of execution thereof.

Report of Membership Commitee, Robert M. Clark, Topeka, Kansas, Chairman.

Report of Committee on Reports, Robert W. Pharr, Memphis, Tennessee, Chairman.

Report of Committee on State Junior Bar Sections, Harold B. Wahl, Jacksonville, Florida, Chairman.

Other Unfinished Business.

New Business.

Report of Nominating Committee.

Nominations from the floor.

12:00 noon—Adjournment.

12:00 to 2:00 P. M.

Balloting by members for election of officers and Council members for the ensuing year.

2:00 P. M.

Meeting of judges of election to count ballots.

Wednesday, July 12

Luncheon, 12:30 P. M.

Empire Hotel

Ronald J. Foulis, Retiring Chairman, Presiding.

Installation of New Officers.

Adjournment.

2:30 P. M.

Private Dining Room 4, Empire Hotel

Meeting of newly elected officers and Council.

(*Continued on page* 513)

**No reports printed in the advance program will be read.*

AMERICAN LAW INSTITUTE COMPLETES MONUMENTAL TASK IN TORTS AND PROJECTS TWO IMPORTANT NEW ACTIVITIES

Approves Five Proposed Final Drafts on Torts at Meeting, Thus Terminating Long Work on This Important Subject—Work in Criminal Law as Related to the Problems of the Sixteen to Twenty-One Year Old Group Undertaken—Preliminary Drafts Now Being Worked over—John H. Wigmore and Professor Edmund M. Morgan to Prepare Model Code of Evidence—These New Undertakings Represent a Growing Emphasis on Improvement of the Law by Remaking Rather Than Restatement—President Roosevelt's Message—Justice Butler Addresses Meeting—Reports of Director and Adviser on Professional Relations—Tentative Drafts Considered, etc.

COMPLETION of the monumental task of restating the Law of Torts and announcement of two additional undertakings of the first importance—a study of the manifold problems presented by crime in the sixteen to twenty-one year old group, and the preparation of a model Code of Evidence—were the outstanding features of the highly successful Seventeenth Annual Meeting of the American Law Institute, held in Washington, D. C., on May 11, 12 and 13.

These last named undertakings represent an increasing emphasis, in the words of Mr. Herbert F. Goodrich's report, "upon the improvement of the law by remaking rather than restatement." But this does not mean that the entire direction of the Institute's activities has been changed. As Director William Draper Lewis says in his report, chief among the things to be restated, in the interest both of the profession and the public, are the Law of Associations, the Law of Judgments, and the Law of Persons. In addition, there are two divisions of the Law of Property—the Rule Against Perpetuities and Covenants Running with the Land, the omission of which leaves the Restatement of Property manifestly incomplete.

A Monumental Task Completed

The successful completion of the Restatement of Torts within the year was a tremendous task. Its magnitude was sufficiently indicated by the number of proposed final drafts presented to the meeting. Five groups worked on the remaining subjects and the Director paid tribute to the fine spirit of loyalty and cooperation among the Reporters and their Advisers which had not only made the completion of the remainder of the task possible during the last year but also accounted for the rapid progress on this important subject during the past ten years. The Director makes the following statement in his report concerning the history of the Institute's work in Torts:

"The first subjects undertaken for Restatement were Contracts, Conflict of Laws, and Torts. Work on each was begun in June 1923. The first two subjects were published in 1932 and 1934, respectively. As planned, the Restatement of Torts covers a much wider field than either of the others. Except Property, there is no other field of the law comparable to it in scope. Not lacking unity, it nevertheless includes many divisions dealing with wrongful and privileged interferences with distinct types of interests. During the progress of the work the editorial organization created to deal with the subject has increased from one to five groups. In all, 145 preliminary drafts were considered by the editorial force. Including all present drafts, twenty-seven tentative and final drafts have been dealt with by the Council and the Institute membership.

Forty-One Reporters and Advisers Have Worked on Torts

"Forty-one Reporters and Advisers have been members of the different Tort groups. Besides Mr. Bohlen we have had seven Reporters for different divisions or chapters: Edgar N. Durfee, Everett Fraser, Fowler V. Harper, Warren A. Seavey, Harry Shulman, Edward S. Thurston, and Maurice T. Van Hecke. On the title pages of the respective volumes will always appear the names of the members of the group or groups which have developed, through years of labor and many conferences, the drafts presented to the Council. They are the men primarily responsible for the Torts Restatement.

"Throughout the first fourteen years of our work on the Restatement of Torts, Francis H. Bohlen was the Reporter, at first the sole Reporter, and as the work progressed, responsible as general Reporter not only for the drafts prepared by him as Reporter for Group No. 1, but also as supervising Reporter for the drafts of Chapters prepared by other groups. To our very great regret, since your annual meeting in 1937 his illness has prevented his active participation in the work. The divisions covered in Volume III published last fall were begun and nearly all of them completed before your meeting in 1937, while the material dealt with in the final divisions and chapters now before you was prior to that time often the subject of discussion not only with me, but with others of the editorial force. Therefore the Restatement of Torts as a whole reflects his scholarship and that instinctive grasp of the principles and spirit of our common law which is his outstanding intellectual characteristic. I am therefore sure that you will approve

the action of the Council in carrying his name as Reporter for Torts not only on the title page of the first three volumes but also on the title page of the concluding volume."

Youth and Crime: A New Undertaking

As to the newly undertaken work in the problems of youth and criminal justice, Director Lewis pointed out that from the beginning the Institute had recognized that it was its duty to do what it could to improve criminal justice. In the performance of that duty it had already prepared and published a Code of Criminal Procedure—many parts of which were already in force in a considerable number of States—and in addition, had had two important reports from an "advisory committee composed of eminent judges, lawyers, law professors, and members of allied social sciences—men whose studies and practical experience lend just weight to their opinions." In further explanation of this projected activity, he said in his report:

"In 1935 this advisory committee recommended that we should produce a comprehensive Code of Criminal Law and Administration, suggesting an organization for the accomplishment of the task. As I stated in my last annual report, the sum required to carry out its recommendations is large and general financial conditions so far have prevented us from securing the necessary funds.

"The second report which was submitted on February 12th of last year was, like the first report, unanimous. It is a most interesting document. The Committee points out that: the object of criminal justice should be the protection of society. The substantive and adjective criminal law and the things which should be done to the convicted person should be judged from that standpoint. In the United States, however, we have inherited a system that makes not the protection of society but punishment of the criminal its primary object. As a consequence, the convicted person is punished according to the degree of abhorrence with which the community regards the act he has done. Punishment fits the crime not the criminal. With the expiration of his term the prisoner, though perhaps known to be dangerous, is released to prey again on society; while often a prisoner recognized as practically certain not to commit another crime is kept in jail at the public expense until he has, by completing his term, paid his debt to society.

Underlying Defect in Criminal Law

"Of course, our advisory committee being experts in criminal behavioristic characteristics recognize that in many cases punishment has a therapeutic value to the person punished and at least some value as a crime deterrent. But they were of the opinion that the underlying defect in our existing criminal law system lies in making punishment an end in itself rather than one of the means to the real end which is the protection of society.

"It is significant evidence of the advance in our thinking that not only the psychiatrist and the person experienced in our prison administration but also judges and lawyers who have spent much of their lives in our criminal courts believed that what the Institute most usefully could do to improve existing conditions was to take a segment of our criminal law administration, the segment which affects the youth group between the ages of sixteen and twenty-one, and suggest those changes resulting from making the protection of society rather than the punishment of the convicted youth the primary object.

"A year ago last winter the report just described was discussed and unanimously adopted in principle by the Council. Later, as stated in the first part of this report, the necessary funds were secured to prepare an act or acts which could be submitted to the Council and later to you for consideration.

Preliminary Drafts Being Worked Over

"The plan adopted in our Restatement work has been followed. Preliminary Drafts are being worked over by a comparatively small group composed of the Reporter, John Barker Waite of the University of Michigan, and Advisers. The personnel of the Advisers varies somewhat with the particular topics before the group for discussion. Among the Advisers at present there are: Judge Curtis Bok, Court of Common Pleas No. 6, Philadelphia; E. R. Cass, Secretary of the American Prison Association, New York; Sheldon Glueck, Professor of Law at Harvard University; Leonard V. Harrison, Washington, D. C., with Pryor McM. Grant, author of "Youth in the Toils"; Doctor William Healy, Director Judge Baker Guidance Center, Boston, Massachusetts; Edwin R. Keedy, professor of law at the University of Pennsylvania, Philadelphia; Austin H. MacCormick, Commissioner of the Department of Correction, New York; William E. Mikell, professor of law at the University of Pennsylvania, Philadelphia; John D. Rockefeller, 3d, New York; Doctor Thorsten Sellin, Department of Sociology, University of Pennsylvania, Philadelphia, and Judge Joseph N. Ulman, of the Supreme Bench of Baltimore City, Maryland.

Proposed Work Is Defined

"We are not engaging in original fact researches although Doctor Sellin has compiled from existing official statistics most interesting and informative statistics for the use of the Committee. Indeed, the Institute would not be undertaking this matter had not existing experience and study by those devoting their lives to the subject produced a group of persons adequate to do the work we want to do. That work is to ascertain the legal and practical difficulties of adjusting our criminal law and its administration as it affects the sixteen to twenty-one age group to the better protection of society, reducing the danger of further anti-social acts by those members of that group who are charged with or convicted of crime; not only of serious crime but of any anti-social conduct. For instance, one of the things which has already engaged the attention of the group is whether it would be wise and legally and practically possible to commit convicted youths for a long or indefinite period to a treatment board, and what should be the organization and duty of such a board and the extent of its powers. If any positive affirmative conclusions are reached, and we can, I think, assume that some will be reached on this or at least on some other pertinent matter, the conclusions will be formulated in drafts either of carefully stated principles or proposed statutes, accompanied by adequate commentaries and explanatory notes. These drafts, though like all our other preliminary drafts confidential, before being embodied in a final preliminary draft for the considera-

tion of the Council next winter, will be sent to the members of the Advisory Committee to which I have referred and also to many others who have given special consideration to the subject.

Institute Not Committed in Advance to Particular Recommendations

"In view of the great and proper public concern in all matters pertaining to crime and especially crime among young persons, it is perhaps well for me to emphasize here what all of you already know: that while we have gladly undertaken this important work, the Institute is not committed to the recommendation of any definite legislation or to any statement of principles relating to criminal justice until both our Council and our members assembled in a regularly called meeting have spoken.

"We all need, do we not, the self-education which results from consideration and discussion of matters of great public moment on which the public rightfully wants to be able to look to the legal profession for guidance? For this reason alone work in the field of criminal law would be well worth our while. But we may, with reason, expect from our present undertaking more than self-education. If there are developed by the necessarily slow but sure process to which we are accustomed definite recommendations on which we can unite, the weight of the Institute will be an important factor in their very general adoption.

Reasons and Plans for Preparing Evidence Code—Overhauling of Rules Long Overdue

The following explanation of the reasons and plans for the model Code of Evidence are of special interest:

"The action of the Carnegie Corporation in appropriating $40,000 for our use in drafting a model Code of Evidence gives us a long-sought opportunity to do a much-needed public service. The existing rules of evidence are often in their application uncertain; some prevent rather than promote the correct ascertainment of facts. Their overhauling by a body capable of distinguishing the absurd and obstructive from the useful and necessary is long overdue.

"When we first started our work on the Restatement of the Law we considered undertaking a Restatement of Evidence. We then came to the conclusion that the existing confusions and defects in the present law of Evidence can be remedied only by legislative action. We always have been primarily interested in a change in the existing law, not its restatement.

"The first stages of the work on the Code have been going forward since February. We are fortunate in having secured John H. Wigmore as Chief Consultant and Edmund M. Morgan as Reporter. For a generation, John H. Wigmore has been for lawyers the outstanding authority on the Law of Evidence and the chief exponent of its intelligent reformation. The work which Edmund M. Morgan has done and his present position in the profession is a guarantee that the Code will be well done and when done, its adoption most ably advocated.

"John M. Maguire of the Harvard Law School faculty will work with Mr. Morgan as his Chief Assistant. We are now engaged in selecting the Advisers, as Mr. Morgan has notified me he will have a first draft of an important part of the Code ready for their consideration by the end of August.

Tentative Draft to Go to Council Next Winter

"It is our present expectation that next winter the group will be able to submit to the Council a proposed tentative draft of the sections of the Code relating to witnesses, their competency, examination, impeachment, rehabilitation, privileges, and privileged communication. This draft as amended by the Council, will be submitted for your consideration next spring. In the spring of 1941 you should have before you a tentative draft of the sections of the Code relating to exclusionary rules, including remote and prejudicial evidence, hearsay, opinion and best evidence rules; also some, if not all, of the sections relating to miscellaneous matters, including burden of proof, presumptions, judicial notice, function of judge and jury, and parole evidence. In 1942 it is our expectation that we shall be able to complete a proposed final draft of the entire Code."

Full Attendance and Sustained Interest Mark Regular Sessions

The regular sessions of the Institute opened on Thursday, May 11, in the ball room of the Mayflower Hotel at Washington. There was the customary full attendance and evidence of sustained interest in the work of the organization. This interest was manifested throughout the entire meeting in the careful attention given to the various proposed drafts submitted for consideration.

President George Wharton Pepper called the Institute to order. His opening remarks were in his usual felicitous vein, as follows:

"My speeches in 1937 and 1938 were generally conceded to have been among the best that remained undelivered. (Laughter.) I am ambitious to add the 1939 address to the rest, thus making a notable trilogy of oratorical self-restraints. I have the impression that the high point of my administration is when I have made an announcement of this sort. (Laughter) It is said that Republics are ungrateful but certainly it is not true of the Institute. They welcome my executive silence, and the happy faces and bright eyes that greeted the announcement last year have made me unwilling ever again to inflict a presidential address on my constituents.

"I know you will be delighted to hear me say there will be no presidential address in 1939.

"Now, having thus happily disposed of the first number on our agenda, we come to a happier one—the second. If I were to announce to you, without compensating assurance, that the Chief Justice was unable to be with us today, you would be both anxious about his health and grievously disappointed at his absence; but when I hasten to assure you that it is not a matter of health, but merely the carrying out of a prudent resolve formed within the last few days to conserve his health and strength for his onerous duties, you will be greatly relieved; and when I tell you that another Justice of the Court has consented to attend and give us his judicial blessing, you will remind yourselves that 'every cloud has a silver lining,' and when I mention his name, you will realize that this time the lining is not merely silver but pure gold.

"I have the very great pleasure in presenting our highly esteemed and well-beloved Mr. Justice Butler." (Loud and prolonged applause)

Mr. Justice Butler waited for the applause to sub-

side and then proceeded with his remarks. His opening words, as to the lack of any reason for anxiety as to the health of Chief Justice Hughes—who had originally been scheduled to speak—were received with natural satisfaction by his hearers. He then proceeded in a light and humorous vein, and his sallies were greeted with frequent laughter and applause. His reference to the great progress the Court had made in restating constitutional law was particularly enjoyed. Unfortunately Justice Butler's remarks could not be secured in time for publication in this issue.

Reports of the Treasurer, George Welwood Murray, and of the Committee on Membership, of which Mr. George E. Alter is chairman, followed. Then came the report of Director William Draper Lewis, from which important extracts have already been made. Before presenting it, however, the Director read the following message from President Roosevelt, which was loudly applauded:

Message from President Roosevelt

THE WHITE HOUSE
WASHINGTON

May 4, 1939.

My dear Mr. Lewis:

It gives me great pleasure to extend greetings to the Seventeenth Annual Meeting of the American Law Institute. This organization is making a noteworthy contribution to the development and growth of jurisprudence.

The Law is one of the living forces that guide organized society. It cannot remain static, but must be constantly molded and adjusted to the requirements of passing generations and the changes in our social and economic structure. The administration of justice is a bulwark of democracy and its efficiency must be constantly enhanced. More than ever before, the people are conscious of these needs.

Much has been achieved in this direction in recent years. Among the notable accomplishments in this field is the far-reaching reform in Federal civil procedure, which constitutes an outstanding milestone along the road of law reform. The American Law Institute by modernizing and restating numerous branches of substantive law, and formulating a code of criminal procedure, has been a vital factor in this task of adapting the law to the requirements of modern society.

Much still remains to be done, however, on both the substantive and the procedural side of jurisprudence. The simplification of Federal criminal procedure by means of judicial rule-making, is still to be attained. The Federal judicial system must be implemented by an adequate administrative machinery. I hope to see these two steps taken in the near future.

I am informed that the American Law Institute has now under way projects involving the drafting of statutes in the field of criminal justice, and formulating a code of the law of evidence. They constitute activities of vital importance in the general effort to improve our legal system.

I am glad to felicitate the American Law Institute on what it has accomplished, and to wish it still greater success in its future endeavors.

Very sincerely yours,
(Signed) FRANKLIN D. ROOSEVELT.

Honorable William Draper Lewis,
Director,
The American Law Institute,
3400 Chestnut Street,
Philadelphia, Pennsylvania.

When the applause subsided Director Lewis proceeded with his report. It began with tributes to two members of the Institute, long associated with its work—Victor Morawetz, who died on May 18, 1938, and Arthur Prentice Rugg, late Chief Justice of the Supreme Judicial Court of Massachusetts, who died on June 12, 1938. Then follows mention of a resolution of the Carnegie Corporation appropriating $40,000 to be used in the production of a model Code of Evidence, and of a further donation of $25,000, which will be used in connection with holding the usual annual meeting next year. "Besides the gift and prospective gift just referred to," the report continues, "we have received from the Commonwealth Fund, the Samuel S. Fels Fund, and an individual donor, "donations and subscriptions of $36,500 for the purpose of preparing for the consideration of the Council and your annual meeting next year an act or acts dealing with criminal justice insofar as it affects the 16 to 21 age group."

Publications of Torts, Third Volume, and Property Act

The report mentions the publication of the third volume of Torts, as previously authorized, and also of the Property Act, prepared in cooperation with the Commissioners on Uniform State Laws, in accordance with an agreement made in 1935, and approved by the Institute a year ago. The act, he added, had been also approved by the Commissioners and the House of Delegates of the American Bar Association and would be presented to the State Legislatures with the backing of all three organizations.

The report takes up the restatement of Torts, referred to above, of which five proposed Final Drafts were submitted, and then gives these comments on the various Tentative Drafts presented to the Institute for consideration and criticism but not for final action:

Tentative Drafts on Property

"The two tentative drafts pertaining to the Restatement of Property presented for your consideration, Tentative Drafts Nos. 11 and 12, are the product of two editorial groups working on that subject. They cover respectively the Chapters relating to Class Gifts in the Division, Future Interests, the last Chapters of the Division relating to Easements, and the Division relating to Licenses. The size of the draft relating to Class Gifts in Future Interests, 324 pages, indicates the very great amount of work accomplished during the past twelve months by Group (1). . . .

"The Chapter on Licenses which follows the concluding Chapters on Easements in the draft presented by Group (2) though limited in size has presented, as was anticipated, very difficult problems. You will note that we are no longer calling the Division for which Mr. Rundell is Reporter, the Division on Easements and Profits. At the last meeting of the Council it was determined to eliminate the word 'profit' from the title as in this country it is usual to speak of what is called in England 'profits' as 'easements.' There is with us practically no difference in the rules of law pertaining to what was originally called 'profits' and the rules pertaining to easements.

"The Reporters of the respective groups, Richard R. Powell and Oliver S. Rundell, are already working on the revision of all the tentative drafts of Property presented to your meetings since the publication of the first two volumes of Property in 1936, except the Chapter on Powers which you approved finally last year. These drafts, plus those presented to your meet-

ing this year and the Chapter on Powers, cover 1033 pages. Of these 1033 pages, 795 pertain to Future Interests and Powers of Appointment. We expect to publish all the remaining matter pertaining to Future Interests and also the matter pertaining to Powers in the fall of 1940 in Property Volumes III and IV. Whether the Restatement of Easements and the Restatement of Licenses will be included in Volume IV has not as yet been determined.

Security

"On October 22, 1936, the Carnegie Corporation appropriated from the $100,000 set aside for our use under their resolution of 1933, $75,000 for the Restatement of the law pertaining to Security. At your meetings in 1937 and 1938 you considered Tentative Drafts Nos. 1 and 2, respectively, which cover the Division on Pledges. This year, in Tentative Draft No. 3, you have before you for your consideration the division on Possessory Liens and thirty-one sections of the Division on Suretyship.

"Since your meeting last year, there have been held five conferences, three full conferences and two small conferences, of the Reporter and his Advisers.

"When the appropriation for the Restatement of Security was made by the Carnegie Corporation, it was understood that it might not be possible for us on the appropriation to complete all the divisions of the subject. I stated to the President of the Corporation that we would not undertake any division of the subject that we would not be certain to complete within the $75,000 appropriated. Last spring it was evident that we would have to make a choice between Mortgages on Real Property and Suretyship. We could not finish both. We chose Suretyship and the work on that division has been proceeding.

"It is planned that a large part of the remaining matter relating to Suretyship will be submitted for your consideration next year, and the remainder, together with the revision of all prior Tentative Drafts on the Divisions of Security undertaken for Restatement, in the spring of 1941."

European Annotations of Conflict of Laws

The report next refers to the project for European annotations of Conflict of Laws:

"As planned by the late distinguished legal scholar, Mendelssohn-Bartholdy, the Annotations would be published in five or six volumes, each volume setting forth the corresponding Conflict of Laws law in some one of the principal European countries; the volume to be arranged in the order of the chapters and as much as possible in the order of the sections of our Restatement.

"The work as thus conceived is a monumental one requiring the collaboration of American and European lawyers and necessarily taking several years to complete. Published, as it would be, in English, it would stimulate as nothing else a knowledge and interest in comparative law in this country besides being of great practical value to those members of our profession who have clients with interests abroad.

"The untimely death of Mendelssohn-Bartholdy and the disturbed conditions of Europe have so far prevented us from carrying out the project. For some time, however, we have looked to Doctor Ernst Rabel as one eminently fitted to be an important factor in carrying on the work. Doctor Rabel was the founder and, until recently, the Director of the Institute of Foreign and International Private Law carried on under the auspices of the Kaiser Wilhelm Society for the Promotion of Science in Berlin. While we are not as yet in a position to be certain of being able to complete the work, I am glad to announce that last month I was able to send Doctor Rabel a two-year contract under which it is hoped that he will shortly come to the United States and in cooperation with Max Rheinstein, Professor of Comparative Law in the Law School of the University of Chicago, make a real beginning in this notable task."

Announcement of Important New Undertakings

Announcement and explanation of the new undertaking in the field of criminal justice, involving the age group between 16 and 21, and of the proposed preparation of a model Code of Evidence follow. The report concludes by expressing a belief in the continuing usefulness of the Institute:

"The work on the Restatement has tested the ability of the American Law Institute to act efficiently as an agent of the profession for the performance of this duty. The financial support which we have recently received for work in the fields of criminal law and evidence is a recognition of our potentialities for usefulness. An organization which unites for serious work the leading members of the bench, the bar, and the principal schools of law, which has developed a work technique of proved value, need not fear that there will come a time when there will not be many useful things which it ought to undertake. Your Council and its Executive Committee recognize that there is much today needed to be done which we can do."

Report of Adviser on Professional Relations

Herbert F. Goodrich, Adviser on Professional Relations, presented his report. He began by a good-humored reply to a criticism of Professor Chafee that "Group production," as in the work of Restatement, "squeezes out individuality . . . the writing of a single man is more liable to prejudices and errors of judgment, but it has a tang. After all the conferences and compromises that preceded it, the Restatement tastes flat." Mr. Goodrich said:

"Professor Chafee has, in this comment, been somewhat too generous about the individual author; perhaps just a trifle too hard on the Restatement. His own writing has tang, always. So does that of another writer, used by Mr. Chafee as an example of a writer whose product has flavor, the distinguished author of Wigmore on Evidence. But it is not all of us who can make written words become alive as these two legal scholars do. Nevertheless, presumably we shall all admit the tendency to dullness where words of an author are argued over and criticized by others and forms of statement adopted which are, in many instances, necessarily a compromise among several views.

"How much has that tendency to dullness affected the Restatement? I have read a good many pages of the current drafts with Professor Chafee's criticism and Mr. Franklin's story in mind. My conclusion is that a page of the Restatement is not so spicy as a page of the New Yorker and that a chapter does not contain so many scintillating epigrams as one may find in an opinion by Mr. Justice Holmes. But it does not seem to me that the life has been squeezed out of the language by reason of the fact that we are doing group work. There are not many jokes, it is true. But there are striking illustrations, illuminating comments,

and every now and then, interesting bits of legal history. Blackletter statements do not sparkle, it is true. But the purpose of the blackletter is not to reflect sunshine, but group thought upon a rule of law. Furthermore, the more recent work seems to me to read more smoothly than does some of the matter written earlier in the process of restatement. For a while there was a tendency to limit our Reporters and their groups to what was perhaps too great a rigidity in their comments. The later material seems to be freer and, therefore, to run more smoothly. Obviously, this is a matter of opinion. What to one person seems sufficient fullness of expression to make smooth reading may seem to another undesirable padding. The final judgment will, of course, be made by the user."

"But regardless of whether the writing is dull or brilliant," the report continues, "the importance of the Restatement in the building of American law continues to be demonstrated both by those who like it and by those whose acceptance is mingled with doubt. One may see both direct and indirect examples of this importance in many places. It is interesting, for instance, to see the skilfully prepared announcement of Professor Scott's important work on the law of Trusts tied to the Restatement and the Institute's debates and discussions in the preparation of that branch of the Restatement. . . .

"The final demonstration of the growth of the acceptance of the Restatement is the examination of the current list of citations. Such a list is completed up to April 1, 1939. It shows nearly 4000 citation paragraphs of the Restatement in its various subjects which we have collected. It is necessarily a quantitative list, not a qualitative one. I know of no way of setting up a table which would show the importance of the citation of the Restatement in individual instances by courts, although if one were inclined he could some day make an examination of Restatement citations by some one court and perhaps draw some conclusions therefrom. Unfortunately, too, the present list is only one of appellate court citations. We have a great many instances of trial court citations sent to us, but nothing from which we can build up a complete citation table. . . ."

State and Restatement Common Law

A table giving the court citations in all the States, in the various subjects restated, up to April 1, 1939, follows. The report continues:

"If the courts of every State spoke with the same voice on every point of law there would be little occasion for a restatement. The only improvement which could be effected in such an instance would be improvement in language used for expressing legal ideas. It is doubtful whether that game would be worth the candle. On the other hand, if the law of our States diverged too widely a restatement of the common law would be impossible. There would not be any law common to us all except the United States Constitution and Statutes. We know, however, that we do have a common law and we also know that there is a split in judicial authority upon many questions of our law. The Institute in many, many instances has had to make a choice of which one of differing views it was to follow. The obvious result of such a choice is that the Restatement will express the view of one State and not of another. How far away does that make the Restatement from the common law as declared by the courts in any one State?

"We tried to find the answer to this question through a section by section examination of the Restatements in the subjects so far worked upon and annotations for each subject so far as they have appeared. We felt that we could get a fairly accurate idea of the difference between the Restatement and the body of case law by examining each of the annotations and seeing how the annotator's statement of the local rule checks with the statement of the rule in the Restatement. Such a check cannot show the correspondence with complete accuracy. Frequently local decisions do not cover the precise point of a Restatement rule, though probably consistent with it. Sometimes the annotator contents himself by citing decisions without committing himself upon their agreement or disagreement with a section. But in most instances, the answer was pretty clear.

Interesting Results of Inquiry

"The results appear in the tables set out below. Two things impress one strongly. One is the very slight degree of disagreement in any one State in any one subject of the Restatement. The other is the immense number of gaps which local decisions leave in the body of law of any subject, assuming that general body of law to be covered by the Restatement thereof. These are the places where we can expect the Restatement most quickly to affect the growth of law. . . ."

The report then gives a series of tables, some of which have appeared in the AMERICAN BAR ASSOCIATION JOURNAL, setting forth the statistical basis for the foregoing conclusions. It then points to an emphasis in a new direction on the part of the Institute.

Law Restatement and Law Remaking

"For sixteen years the main part of the Institute's work has been the improvement of the law through restatement. The Institute has asked its members to aid in the production of the Restatement by inspection and criticism of the work done by its experts. Institute members and the bar generally have responded intelligently and adequately. The Institute has not urged its members to use the Restatement, for it has been felt that such urging was not necessary. If the bar is convinced that the Restatement is an authoritative exposition of the law, of course it will be cited to courts and cited by courts. The list of citations given above shows what has happened in a few short years in this respect.

"We are not yet finished with restatement, but with the close of this year's meeting the majority of the work now under way will have passed through your hands. During the next year, and perhaps longer, increasing emphasis will be placed upon the improvement of the law by remaking rather than restatement. This is not new work for the Institute. Many of the present members made contributions to the difficult writing of a Model Code of Criminal Procedure. Many have taken part also in other statute writing ventures into which the Institute has gone. Before you, at this meeting, is the Contribution Between Joint Tortfeasors Act. Next year there will be in your hands at the annual meeting a large part of a proposed

modern Code of Evidence. Your critical opinion will be asked for and I have no doubt will be given.

Securing Adoption of Work in Statutory Field

"When that Code is written its ultimate usefulness will depend upon something more than its intrinsic merits. It can be promised now that the Code will represent the considered views of the best experts in the legal profession upon what is needed in the remaking of our law of Evidence. But the Code will not become the law anywhere merely by being written. It will have to be adopted by statute or court rule in each State. The Institute, itself, as an organization cannot appropriately urge the acceptance of its work by court or legislature. Should it do that it would cease to be solely a body for scientific legal work and become an advocate. If it becomes an advocate it ceases to be objective and its authority as a scientific disinterested body is diminished.

"It devolves upon the members of the Institute who are convinced of the value of the work in Evidence and other fields which we have done or shall do in the statutory field to assume the leadership in bringing to the appropriate associations, commissions or legislative committees results of this work. That is a responsibility which members have by virtue of their membership in this body and a responsibility which they have by virtue of their position of leadership in our profession. I am sure that this responsibility will be met in the future in the same fine way as it has been met in the past."

State Annotations of the Restatement

Progress in the work of annotating is then reported:

"The Institute began to talk about the State annotations at a meeting of Cooperating Committees in 1927 at the annual meeting in 1928. When the suggestion was made that State and local associations and other interested groups cooperate by the production of State annotations to accompany the Restatement the response was immediate. Obviously, nothing could be done until the publication of the finished parts of the Restatement and we did not publish the first subject to be finished, Contracts, until 1932. The initial enthusiasm which gives impetus to a new project has long since disappeared from annotations. The same thing is true in the purchasing of volumes of the Restatement. We no longer have curiosity buying. The purchasers of succeeding volumes of the Restatement are buying them because they know the Institute and its work. Likewise, persons who are now working on annotations are doing the work because they know about the Restatement, because they are interested in it and because they find satisfaction in working in the scholarly side of the law.

"It is interesting and pleasant to report that we are continually receiving help from those who want to do this kind of work. Law professors still rank as the first among the annotations. Well established Bar Associations, like that in Pennsylvania, continue to operate efficiently through standing committees which have charge of various subjects of annotation. Interested individuals, like Chief Justice Smith, Judge Hutcheson, Mr. Dodge, continue to give unflagging aid in the promotion of Restatement work in their respective communities. In addition to this we are gratified to receive, constantly, new helpers from interested members of the bar in many States. We have had warm and intelligent cooperation from officers in the Junior Bar Section of the American Bar Association and comparable organizations in various parts of the country.

Easy to Begin, Hard to Finish

"An annotation for any subject in any State is an easy thing to undertake and a hard thing to complete. Even where we can furnish an annotator with lists of authorities, suggestions for work, sample annotations from other States and Restatement text he has a long, hard and, sometimes, dreary road ahead of him before the work is completed. But the doing of an annotation is unsurpassed as a piece of legal training. To learn thoroughly through reading, analysis and comparison with the general law, the entire body of authority upon one subject in a given State is a piece of legal education of high and permanent value to the learner. It is proof of a live intellectual interest in our profession that men have been found who, for little or nothing, will go through the arduous task to produce State annotations. Their labor is the gain of every judge and lawyer who uses the Restatement."

A list of the annotations nearing completion, twenty-eight in number, and of those now under way, to the number of one hundred, follows. The report concludes by expressing satisfaction with the fact that, without employing any of the customary means of advertising, the Institute has managed to bring its work to the attention of so many members of the bar.

Drafts Considered by Institute

The work of the Institute during the three-day meeting followed the procedure already developed. The Reporter took the platform and made a brief introductory statement as to the draft to be considered, after which the material was considered section by section, with special reference to sections presenting special difficulties to which the Reporter or his advisers or individual members called attention. The Reporter was frequently called on to explain or justify the form or substance of a particular text.

The greatest interest and certainly the most vigorous discussion were aroused, as was natural, by that portion of Proposed Final Draft No. 6 on Torts dealing with "Interference in Business Relations in Labor Disputes." Professor Harry Shulman, of Yale University Law School, was Reporter for this subject, and consideration of the text ran far beyond the time anticipated by those who prepared the program. However, the difficulties suggested were finally disposed of by striking out certain portions of the black letter and giving the Council a certain latitude as to textual changes and revisions before final publication. As stated by Director Lewis, the few sections deleted were merely a few particular applications of the general principles stated and their omission did not really interfere with the symmetry of the admittedly fine piece of work which Professor Shulman had done

for the Institute. The draft as amended was finally approved.

Tentative Property Drafts Considered

The first draft taken up was Tentative Draft No. 11 of the Restatement of Property, covering the subjects of "Class Gifts" and "Limitations to 'Heirs,' 'Heirs of the Body,' 'Next of Kin,' 'Relatives' and to other groups Similarly Designated." Richard R. Powell, of Columbia University Law School, was the Reporter and A. James Casner, of Harvard University Law School, Associate Reporter. After a detailed consideration of the draft, it was referred back to the Reporters and their Advisers for revision in the light of the views developed and adopted during the discussion.

Consideration of Proposed Final Draft No. 6 of Torts followed. It covered the subject of "Interference in Trade Relations by Miscellaneous Trade Practices" and "By Refusal and Inducing Refusal to Deal." Under the latter head there was a chapter (37) dealing with "Refusal to Deal and Inducing Refusal to Deal or Breach of Contract—in General," and another (Chapter 38), "In Labor Disputes." The following "Scope Note" prepared by the Reporter and printed in the draft gives an idea of the particular problems treated under the last mentioned head:

Scope Note on Important Subject

"This Chapter is divided into seven Topics. Topic 1 states some general principles and definitions which run through the entire Chapter. Topic 2 deals with the propriety of various objects of concerted action by employees. It does not deal with the kind of action that may be pursued for the attainment of the objects. That matter is dealt with in Topic 3, with respect to concerted action by employees against their own employer in a dispute with him. Topic 4 deals with the legality of various types of concerted action by employees against their own employer in furtherance of a labor dispute with another employer. Topic 5 deals with the legality of certain conduct against an employer by workers not his employees when his employees have or have not a labor dispute with him. Topic 6 deals with liability for incidental harm to third persons and to workers dismissed from employment because of the concerted action of other workers. Topic 7 deals with some special aspects of injunctive relief against concerted action by workers.

"This Chapter is restricted to tort liability. The liability for breach of contract not to do the things which the workers are otherwise privileged to do, and the enforceability of their collective agreements with employers are beyond the scope of this Restatement. For the general rules relating to the liability for interference in contract relations see §§9-18.

"The rules stated in this Chapter deal with concerted action by workers as a means of coercion, as a means of securing concession of demands made by them. They do not deal with concerted action which is not an exertion of pressure to compel compliance, as would be the case, for example, if workers should in concert leave their work to go to a picnic or if they should cause harm for the fun of it in the course of a concerted spree. Again, these rules deal with concerted action by workers in matters relating to the employment of workers. They do not deal with concerted action in other connections by persons who are or are not workers. In general, this Chapter deals with the special application to concerted action by workers of the rules stated in §§8½-18."

Further Proposed Final Drafts in Torts

Consideration of Proposed Final Draft No. 7 in Torts, for which Dean Maurice T. Van Hecke of the University of North Carolina Law School is Reporter, followed. It covered the subject of "Injunction." Certain sections provoked considerable discussion, in which the Reporter filled the customary role, and the draft was then approved. The same course was taken as to Proposed Final Draft No. 8 in Torts, covering "Damages," for which Professor Warren A. Seavy of the Harvard University Law School was Reporter. Proposed Final Draft No. 9 in Torts, covering "Contributing Tortfeasors," "Defenses," "Events Which May Terminate a Cause of Action for Tort," and "Tortious Conduct Not Previously Dealt With," for which Professor Seavy was likewise Reporter, also received final approval.

The last Proposed Final Draft in Torts to be considered and approved, thus terminating work on this vast subject and paving the way for publication of the final volume, was on the general subject of "Invasions of Interests in Land Other Than by Trespass" (Proposed Final Draft No. 5). The three chapters considered dealt with "Invasions of Interests in the Support of Land and of Artificial Additions Thereon"; "Invasions of Interests in the Private Use and Enjoyment of Land (Private Nuisance)"; and "Invasions of Interests in the Private Use of Waters (Including Questions of Riparian Rights)." Professor Everett Fraser of the University of Minnesota Law School was Reporter for this subject.

Other Tentative Drafts Presented

Another Draft presented for consideration during the meeting was Tentative Draft No. 12 in Property, for which Professor Oliver S. Rundell of the University of Wisconsin Law School was Reporter. It covered the subjects of "Extinguishment of Easements and their Protection Against Third Persons," and of "Licenses" in the Division on "Servitudes." Still another was Tentative Draft No. 3 on "Security," for which Professor John Hanna of the Columbia University Law School is Reporter, covering the subjects of "Possessory Liens," "Nature and Creation of Suretyship" and "Surety and Principal." These were considered and referred to the Reporters for further revision.

"Contribution Among Tortfeasors Act," for which Professor Charles O. Gregory, of the University of Chicago Law School is Reporter, was approved. The act is being drafted in cooperation with the National Conference of Commissioners on Uniform State Laws. It will not be published until it is submitted to the Commissioners and approved by them.

Judge Henry T. Lummus, of the Supreme Judicial Court of Massachusetts, was elected member of the Council to fill the vacancy caused by the death of Hon. Arthur P. Rugg, late Chief Justice of the same court.

(*Continued on page* 486)

DRAKE'S PLATE OF BRASS

Discovery of Remarkable Historical Memorial Set up in 1579 by Sir Francis Drake on Voyage to California Coast—Takes Possession of Country in Name of Queen Elizabeth and Leaves Plate to Record Act and also Cession of Land by Natives—Announcement of Discovery of Plate—Verification—Now on Exhibition in Palace of Fine Arts at Golden Gate International Exposition, etc.

By Allen L. Chickering
President of California Historical Society; Member of Los Angeles Bar

IN the fall of the year 1577 Francis Drake sailed from England with five vessels bound for the Orient. Nearly a year later he passed through the Strait of Magellan with only three vessels. Shortly after reaching the Pacific Ocean the vessels were separated in a storm and Drake sailed north with only one vessel, the "Golden Hinde." He captured many Spanish vessels and took a quantity of gold, silver and jewels. The main prize which he captured was the "Cacafuego." His vessel by this time was not only heavily loaded but needed to be reconditioned, so he sought a harbor in which to recondition it. According to "The World Encompassed," which is based on the account of Drake's chaplain, Francis Fletcher, he found on June 17, 1579, a satisfactory harbor in latitude 38 deg. 30 min., where he came to anchor and remained until July 23, Old Style, so by the modern calendar his sojourn there was from June 27 to August 2, 1579. During this stay his vessel was reconditioned.

The accounts of Drake's voyage tell of the Indians whom he met and of their habits. Drake's relations with the Indians were friendly and finally the chief or, as they called him, the Hióh, attempted to get Drake to take possession of the country, making signs that they would resign unto him "their right and title in the whole land." This offer was, according to "The World Encompassed," accepted by Drake in the name of her Majesty, Queen Elizabeth, and before leaving, as a sign of taking possession, he set up a Plate of Brass. The description of this act, taken from "The World Encompassed," is as follows:

"Before we went from thence, our generall caused to be set vp, a monument of our being there; as also of her maiesties, and successors right and title to that kingdome, namely, a plate of brasse, fast nailed to a great and firme post; whereon is engrauen her graces name, and the day and yeare of our arriuall there, and of the free giuing vp, of the prouince and kingdome, both by the king and people, into her maiesties hands; together with her highnesse picture, and armes in a piece of sixpence currant English monie, shewing it selfe by a hole made of purpose through the plate; vnderneath was likewise engrauen the name of our generall &c."

On a day in the latter part of June or the early part of July, 1936, a young Oaklander named Beryle W. Shinn, while picnicking, picked up a piece of metal on a ridge at the head of San Quentin Bay, an arm of San Francisco Bay, and carried it home, believing that it was a piece of iron and might serve to cover a hole on the inside of his automobile. Some months later, when he started to make use of it for that purpose, he discovered that it seemed to bear some inscription, so he took it into the house and scrubbed it but was able to make nothing of the inscription. Being curious, he showed it to some friends, among them a former pupil of Dr. Herbert E. Bolton of the University of California, who advised that Mr. Shinn show it to Dr. Bolton. Dr. Bolton at once recognized it and believed it to be the Plate set up by Francis Drake in 1579. He consulted with the writer, President of the California Historical Society, who organized a group of members of that Society to acquire the Plate from the finder and present it to the University of California.

Upon announcement of the discovery of the Plate, a chauffeur named William Caldeira came forward and stated that he had found it more than three years before on the Laguna Ranch in Marin County near Drake's Bay. He had, however, been unable to make anything out of the printing on it and had finally thrown it away near the place where Shinn picked it up. The place where Caldeira threw it away could not have been the exact place where Shinn picked it up as the distance between the two places was too great. Accordingly someone else must have handled it in the meantime but who it was has not as yet been discovered.

The wording of the inscription on the Plate is as follows:

"BEE IT KNOWNE VNTO ALL MEN BY THESE PRESENTS IVNE. 17. 1579.
BY THE GRACE OF GOD AND IN THE NAME OF HERR MAIESTY QUEEN ELIZABETH OF ENGLAND AND HERR SVCCESSORS FOREVER I TAKE POSSESSION OF THIS KINGDOME WHOSE KING AND PEOPLE FREELY RESIGNE THEIR RIGHT AND TITLE IN THE WHOLE LAND VNTO HERR MAIESTIES KEEPING. NOW NAMED BY ME AN TO BEE KNOWNE VNTO ALL MEN AS NOVA ALBION.
C FRANCIS DRAKE."

The announcement of its discovery was made by Dr. Bolton at a meeting of the California Historical Society held April 6, 1937. Following the announcement, there was, as might have been anticipated, considerable discussion as to the authenticity of the Plate. This discussion took the form of questioning the English in the inscription and the metallic quality of the Plate. President Robert G. Sproul of the University appointed a Committee to determine upon and have made such tests as to the authenticity of the Plate as in its judgment seemed desirable. The Committee finally decided to submit the matter of making such tests to Dr. Colin G. Fink of Columbia University,

New York, who, in the opinion of the Committee, was the best qualified man in the United States to make such an investigation. Dr. Fink accepted the responsibility and volunteered his services. He associated with him Dr. E. P. Polushkin. In making the tests he secured the services of Dr. George R. Harrison of the Massachusetts Institute of Technology, a recognized expert in spectroscopy.

The Plate was in the hands of Dr. Fink for more than seven months, and it is doubtful if a more thorough examination of a similar case has ever been made. There was submitted to him at his request a report on the temperature and climate of the region in which the Plate was found or in which it might have been set up, a report on the geology of these regions, and samples of soil from the place where Shinn discovered the Plate, the place where Caldeira found it and from the site at Pt. Reyes where many people thought it had originally been set up. Dr. Fink summarized his report and arrived at a conclusion which I quote:

"SUMMARY

(1) There is no doubt whatsoever that the dark coating on the surface of the plate is a natural patina formed slowly over a period of many years.

(2) Numerous surface defects and imperfections usually associated with old brass were found on the plate.

(3) Particles of mineralized plant tissue are firmly imbedded in the surface of the plate. This is likewise a very positive proof of the age of the plate.

(4) Cross sections of the brass plate show (a) an excessive amount of impurities; and (b) chemical inhomogeneity; as well as (c) variation in grain size. All three of these characteristics indicate a brass of old origin.

(5) Among the impurities found in the brass of the plate there is magnesium, which is present far in excess of the amount occurring in modern brass.

(6) There are numerous indications that the plate was not made by rolling but was made by hammering, as was the common practice in Drake's time.

CONCLUSION

On the basis of the above six distinct findings, as well as other data herewith recorded, it is our opinion that the brass plate examined by us is the genuine Drake Plate referred to in the book, The World Encompassed by Sir Francis Drake, published in 1628."

In addition to the study of the Plate and its patina, much study has been made of the spelling of the words appearing in the inscription. The writer has been deeply interested in this subject and has made a considerable study of old English documents and books in connection therewith. As a result, the writer has found examples of spelling of all the words used in the Plate like that appearing in the Plate. There is an obvious misspelling of the word "and" toward the end of the inscription, but this seems to have been the only actual mistake made by the person who prepared the Plate. The word "her" is used in the Plate three times and is spelled "herr." From the writer's study, he is convinced that little attention was paid in manuscripts of the time to anything except phonetics. The word "her" appeared on the page of one manuscript examined spelled in four different ways, namely, "hir," "hur," "her" and "here." In another document, referring to the same person, Queen Elizabeth, it was twice spelled "herr" and twice "her" in the same sentence.

The University of California, to whom the Plate belongs, has permitted its exhibition at the Golden Gate International Exposition, and it is now on exhibit in the Palace of Fine Arts, where it may be seen by members of the Association who visit San Francisco at the time of the coming Convention.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

LEGISLATIVE History of Federal Income Tax Laws, 1938-1861, by J. S. Seidman. 1938. New York: Prentice-Hall. Pp. VII-XVIII, 1166.—The author of this useful book is a lawyer and is also a member of a well-known firm of certified public accountants. The professed aim of the book is an ambitious one, viz., to make readily available in compact form "everything of interpretative significance said to or by Congress and passed or rejected by it, from the beginning of income tax legislation (1861) to date."

Probably no body of statutory law is more replete with problems of statutory construction or interpretation than the various Federal income tax acts. The cardinal rule of construction in cases where application of the statute to the facts of a particular case brings to light an ambiguity or uncertainty of meaning in the statute is the legislative intent. Since the intent of Congress, when ascertained, is ordinarily controlling, the careful lawyer will always make an exhaustive study of the legislative history of the statutory provisions involved in his case. Such study will often necessitate tracing its history through a number of revenue acts. The reports of the congressional committees, including conference reports, provide the chief source of illumination of congressional intent. Statements made on the floor of the House and Senate during debate by members in charge of the bills are often, also, of importance, as are the reports of the Joint Committee on Internal Revenue Taxation and some material in reports of hearings. Failure by tax counsel to make a complete search of these materials may and in many cases has affected the ultimate disposition of their cases and has contributed to error in judicial decisions and rulings.

The principal contribution made by Mr. Seidman's book is that it gathers together in compact and organized form these essential materials, which are otherwise scattered through many volumes of the Congressional Record, committee reports, and elsewhere. Many of these reports, particularly in the case of the earlier acts, are either unavailable or are extremely difficult or expensive to obtain. The reports under the later acts are particularly helpful because of their more detailed character and the use of illustrations on many specific points.

Such examination of the volume as the reviewer has been able to make indicates that the work has been carefully and thoroughly done. The material in the book has been arranged act by act, with the acts in inverse order of chronology, beginning with the latest. The provisions within each act are set forth in the order of their section number and subdivision. Paraphrasing the author's own description, an effort has been made to set forth respective items of legislative history applicable to a provision in the order approximating their relative weight for interpretative purposes. A provision is deemed to have a legislative history in a particular act if: (a) a language change occurred during its passage through Congress; (b) a committee reported or commented on it; (c) it was discussed on the floor; (d) hearings were held on it; or (e) there was an unenacted provision related to it which had a legislative history. The importance of the last mentioned possibility in research into legislative history is commonly overlooked.

An introduction entitled "Guides to the Use of this Book" warrants careful reading and contributes to its efficient use. Herein are set forth the principles of inclusion and exclusion underlying the organization and content of the volume. It is obvious that care has been exercised to avoid padding of the book through the inclusion of repetitious material, as where, for instance, the Ways and Means and Senate Finance Committee Reports overlap, or of material which has little or no value for interpretative purposes. Minor differences of judgment which may exist, as to whether the author has drawn the line in all cases at the right point, detract little from the general usefulness of his work.

In conclusion, the reviewer feels no hesitation in saying that this book will prove a valuable, if not indeed an indispensable, addition to the libraries of tax counsel.

San Francisco — ARTHUR H. KENT

The Theory and Practice of Modern Taxation, by William Raymond Green. 2nd ed., revised and enlarged. 1938. Chicago: Commerce Clearing House. Pp. viii, 364.—To those unacquainted with the first edition of this book a word concerning the author will convey even more about the work than is usually the case in a review. Judge Green, now of the United States Court of Claims, was for 15 years a member of the Ways and Means Committee of the United States House of Representatives; during the Sixty-eighth, Sixty-ninth, and Seventieth Congresses (1923-1929) he was chairman of that Committee and during the latter two Congresses Chairman also of the Joint Committee of the House and Senate on Taxation. From such a background of experience one could hardly have expected—nor does Judge Green attempt—a profoundly theoretical contribution to the literature of taxation; on the other hand the book, through its indications of the author's perception and understanding, its sincerity and absence of panacea, and the evidence it affords of his conscientious acceptance of the responsibilities "which necessitated a study of the methods of application of taxation and the results obtained thereby both in this country and in Europe," cannot help but be reassuring to believers in representative government.

Probably the greatest value of the book is the light which it throws upon those specific provisions of our

tax laws in which the seemingly best in theory has been forced to yield to the practical and expedient. Indeed, the content of the book might be described as treating the theory *of* the practice of modern taxation rather than the theory *and* practice. Other valuable portions of the book—comprising nearly a hundred pages—deal with foreign systems of taxation particularly those of Great Britain and France in comparison with those of this country.

As is almost inevitably the case in any book, exception may be taken at various points. The statement (page 292) that occupational license taxes as illustrated in Florida discourage initiative and restrict business is hardly proved—least of all by the statement that "this State seems to have as much or more trouble in meeting its obligations than any other State in the Union." In view of the perfectly proper acceptance of nonrecurrence as an essential element in the definition of a capital levy, (page 293) the reader is left somewhat confused by the discussion in the next paragraph of a 1918 "capital levy" in Germany in terms which distinctly imply the continuance and fluctuating yield of the levy over a period of years. In spite of criticism of this type the book is eminently successful in presenting a clear and readable exposition in a field of vital concern to everyone but in which the usual treatises are forbidding.

Considerable progress toward mitigation of the tax problem may be hoped for when all tax-paying groups apply to themselves the wisdom of Judge Green's observation (page 321), "In States where the rural population predominates, the farmers to a large extent control public expenditures and might if they chose reduce them considerably and thus obviate the necessity of such heavy taxation."

The Income Structure of the United States, by Maurice Leven, assisted by Kathryn Robertson Wright. 1938. Washington, D. C.: The Brookings Institution. Pp. 177.—So much recent discussion of social equity, taxation, security, underconsumption, theories of the business cycle, etc., is predicated upon assumptions as to the distribution of individual incomes that any book which examines the limitations and implications of concepts and data on distribution is welcome. The authors of this book, limiting themselves at the outset to "pointing out some simple—and what may appear obvious—truths relating to the income structure and to the statistics pertaining thereto" devote a large part of their analysis to wage differences and their causes. Estimates and figures on income distribution in 1929 are brought together from a variety of miscellaneous sources; in later chapters changes in income distribution between that year and 1936 are discussed. In its insistence that income inequalities are traceable to different causes calling for different remedies the book definitely contributes to clarification of the issues. In the reviewer's opinion the authors subject one of the better portions of the book to quite an unnecessary hazard in the suggestion that some readers may prefer to read chapter 1 last.

WILLIAM H. MOORE

Washington, D. C.

My Day in Court, by Arthur Train. 1939. New York: Scribner's. Pp. vi, 520.—Part of my apprenticeship at the Bar was passed in the office of an old lawyer who devoted himself almost exclusively to equity and probate matters. He never wanted to and rarely ever tried a jury case. He had never been in a criminal court. Yet he pounced upon and devoured the Tutt stories as rapidly as they appeared. I always thought that he saw in his hero his other self "defending the morally innocent, but legally guilty, who by utilizing the technicalities of the law secured real justice for the prisoners at the bar." (P. 481).

Many like this old lawyer are left as well as many others who for different reasons followed the fortunes of Mr. Tutt. All such will welcome these reminiscences of his creator. Mr. Train has a good story to tell and tells it well. Boston born and Harvard educated, he has had a varied and interesting career. For many years he served as assistant district attorney in New York. For a shorter time he engaged in private practice, mainly in trial work. During most of the time he was at the Bar he was author *ad interim* and finally a full-time writer. He had an unrivalled opportunity for acquiring material for stories about lawyers and courts and the knack of putting his observations into popular fiction. If his work is always objective and never very deep, it at least has the stamp of truth. It takes a lawyer to escape the pitfalls that lie in the path of the author who essays to deal with lawyers, judges and courts. No one ever caught Mr. Train in an inaccurate statement as to law or practice.

This volume gives the stories behind the stories. It is to be regretted that it does not deal more at length with some of the more sensational trials in which Mr. Train participated, or which he observed. Among them were those of Harry Thaw, of Doctor Kennedy for the murder of Holly Reynolds, of Nan Patterson, of Roland B. Molinaux, of Abe Rummel, of Albert T. Patrick and of Lieutenant Becker.

Mr. Train does tell of the Henry Siegel and Abe Hummel trials and of the trial of the Camorrists of Italy. Both he does so well as to make us hope that some day he will turn his versatile pen to a book of "Famous American Trials I Have Attended." That sort of thing is more frequently done in England than in this country. But even there it is not as well done as Mr. Train could do it. It is usually done by barristers who know their subject but can't write, or by writers who have merely crammed up on their subject. Mr. Train knows the subject and can write. Already he has incomparably etched the courts in a great American city.

This book would have been worth writing if only for the sake of the character study it contains of William Travers Jerome. Many of us who were young when Jerome was crusading then felt that he deserved the title Mr. Train gives him—Beau Sabreur. Yet, as Mr. Train says, "He shot across the sky at a psychological moment, hung blazing for a brief period of almost unparalleled adulation, and, unable to fulfill the exaggerated hopes which his personality and his own declarations aroused, faded from the political firmament." (P. 137). This study gives the best explanation I have yet seen of this phenomenon.

Parts of this book can be fully appreciated only by lawyers. No one else can thoroughly enjoy that chapter in which famous descriptive passages from literature are subjected to the rules of evidence and found inadmissible as violating the rule against opinion evidence. It has many a chuckle for those who are successfully engaged in breaking down that rule.

So with Mr. Train's contrast of the life of a writer with that of a lawyer. He left the active practice with some reluctance—chiefly because he was primarily in-

terested in trial work and disliked office drudgery. Had there been a class of barristers which he could have joined he probably would have made another decision. He seems, however, to harbor no regrets. He feels that the writer's work is "progressive, cumulative in value, and has definite continuity," with some permanence. On the other hand, of the law he says:

"The diversity of the law is entertaining and instructive, but the lawyer—*qua* lawyer—leaves no lasting record, the wind bloweth over him and he is gone. The points he has raised and won, no matter how individually important, are scattered and unrelated. A few remember the cases he has tried, but he has nothing to show for them except a file of dusty briefs." (P. 437).

While Mr. Train's volume has a special appeal for lawyers, yet for them it is not a mere postman's holiday. It will lead them along bypaths that have often tempted and take them into green and pleasant lands that have always lured.

WALTER P. ARMSTRONG

Memphis, Tennessee

The American Criminal: An Anthropological Study, by Earnest Albert Hooton. Vol. 1. The Native White Criminal of Native Parentage. 1939. Cambridge: Harvard University Press. Pp. xvi, 309. Appendix 480 pages.—In this volume Professor Hooton offers statistical material to substantiate the statements he popularized in his earlier book, CRIME AND THE MAN. His belief is that criminals are biologically inferior to honest citizens and that the only remedy is their extirpation or segregation in a socially aseptic environment.

The present study is concerned with 4212 native white criminals of native parentage from nine states: Arizona, Colorado, Kentucky, Massachusetts, New Mexico, North Carolina, Tennessee, Texas, and Wisconsin. As a control group 909 civilians were measured. Analysis of the data by the Hollerith tabulating apparatus yielded 19 metric differences—e.g., comparative shortness of criminals—and 11 morphological differences—e.g., excess of mixed eyes in the criminal group, and scarcity of dark and blue eyes. Significant differences were also found between first offenders and recidivists and between various types of offenders. Unfortunately for the police, these are average or composite differences and cannot be relied upon for individual diagnosis.

The author occasionally yields to the statistical temptation to regard as causal factors which are merely associative. He himself admits that the civilian sample is inadequate. One feels that he has merely proved that convicts differ, not from civilians of comparable parentage and environmental status, but from the Tennessee firemen, the Massachusetts militia, and the hospital outpatients who were actually measured. A more scientific approach was shown by Professor Gillin in his contrast of Wisconsin murderers with their law-abiding siblings. The analysis of offense types is more interesting, although it suffers from an acceptance of commitment charges as distinctive. Assault, rape, and second degree murder, for instance, are terms often blanketing very different crimes. Overloading of categories by various states also produces confusion.

Nevertheless this book is thought-provoking and a valuable contribution to the study of the offender. Reference libraries will find it indispensable. A more comprehensive index would improve its usefulness.

JAMES HARGAN

New York City

It Is Later Than You Think: The Need For a Militant Democracy, by Max Lerner. 1939. New York: The Viking Press. Pp. x, 260.—The enigmatic title of this book by a former editor of The Nation has puzzled many and has been variously interpreted. It appears that on a clock-tower in a Spanish city square is written, in stone, "It Is Later Than You Think," and the implication in this striking phrase is of course religious and admonitory: it urges preparation in this world for the judgment in the next. Mr. Lerner, who is a professor of economics at Williams College, and is known as an advanced Liberal of unusual ability and learning, is interested in this world and in the blessings of our civilization—liberty, democracy, cultural diversity, the possibility of abundance and of leisure for all—and admonishes us to organize and fight for the preservation and extension of those blessings. He draws for our benefit certain lessons from the rebarbarization and dehumanization of Germany and Italy, and demands of us a militant, fearless attitude toward the forces of evil and wrong, rather than one of doubt, weakness, and self-distrust.

Mr. Lerner does not despair of democracy. It is late, but not too late, in his opinion, to challenge and defeat reaction. Capitalism must be democratically and gradually transformed into a planned collectivism. Political democracy without economic democracy is today a farce and snare, in Mr. Lerner's view. A constitutional plutocracy may wear a democratic mask, but the deception is becoming apparent. The situation is today highly critical. Rational and socialized collectivism is still a possibility, provided counter-revolution can be prevented. Democracies "must survive against the anarchy of unplanned capitalism, the concentration of corporate power, the sabotaging efforts of reactionary business, the incipient fascist movements within, the aggressive fascist imperialisms without." Hence the United Front movements.

Mr. Lerner is no Utopian. He offers no blueprint of the collectivist order. But he does discuss the limits of planning, the requisite safeguards, the taming of power, the rights of minorities under collectivism, the mistakes of the dogmatic socialists, the functions and proper strategy of consistent and militant humanists and democrats. While the book is by no means systematic, it covers all the problems and issues of our troubled period, including the tragic experiences of the nations once deemed progressive that have, because of apathy, cowardice, futile factional strife, and misunderstanding of the implications of liberalism, lost all the values of genuine civilization.

There is a note of urgency throughout the book, which is remarkably well written and which thoughtful and judicious conservatives, as well as the old-fashioned American liberals of the Godkin-Villard-Mencken laissez-faire school, cannot afford to ignore. There is no doubt that Mr. Lerner represents and vigorously speaks for a growing and influential group of independent, pragmatic, cultivated, embattled, and evolutionary radicals to whom college youth listens with deep interest and lively sympathy.

VICTOR S. YARROS

John Marshall Law School, Chicago

Universal Digest of Laws & Ordinances (*Recueil Universel de Lois et Décrets*). Vol. I. 1938. Geneva: International Legislative Information Centre. Pp. 739.—There have been during the past generation several ambitious attempts to supply a practical handbook of current world-law. That international business-relations need such a work is unquestionable. The Handbook of the Commercial Laws of the World, in a score of well-bound volumes, published some 35 years ago, was competently edited and was successful in its field; but it soon fell out of date and was not kept up. The perfectly-organized and adequately comprehensive work finally appearing was that of the Institute of Legislative Studies, at Rome, directed by Sr. Salvatore Galgano (who attended the meeting of the American Bar Association in Milwaukee in 1934). That work was divided into several parts,—Laws, Decisions, Treatises and Essays, Bibliography. It continues to appear. But it is in Italian (except where a contributing editor uses English), and therefore requires a translator.

Now comes this International Digest, which solves the language problem by presenting everything in both English and French.

And what does it offer?

In the first place, as to *style*, it offers the more important laws in full text and the less important ones in abstract. For example, here are abstracts of the Philippines' Executive Order of December 27, 1937, amending the procedure for condemnation of land for public purposes (p. 195), and the Italian Decree of December 12, 1937, establishing an Industrial Reconstruction Institute for financial assistance to industrial undertakings (p. 194). And here also are the full texts of the new Constitutions of Lithuania (p. 111) and of the State of Yaracuy in the Venezuelan Republic (p. 135), as well as the texts of the new Landlord and Tenant law of France (p. 556) and the new Limited Liability Law of Columbia (p. 565); and numerous laws, amendments, and administrative orders of the United States and some of our States are noted at various points.

Secondly, as to *topical scope*, it covers all subjects of law, classified under the grand divisions of International Law, Constitutional Law, Economy and Finance, Administrative Law, Civil Law, Commercial Law, Social Law, Criminal Law, and Procedure. All of this is amply indexed.

Thirdly, as to *countries*, it reaches into all countries. Not every one is covered in each volume; but as the materials appear they are here gathered until a volume-size (500-600 pp.) is reached. Some 500 countries or provinces or colonies are represented in this volume.

Fourthly, as to *source*, the information is taken directly from the Official Gazettes or Journals or Bulletins as soon as promulgated and received. "Hundreds of these Journals," says the Preface, "are scanned daily by legal experts who combine professional experience with academic training."

Fifthly, as to *timeliness*, this has been made a special object of the editors. Geneva is of course today the world's greatest clearing house for world-information; and the official connections of the League Secretariat and Library with all countries ensure the promptest automatic receipt of all official documentary sources. The volumes appear monthly in a stiff board cover.

And finally, as to *sponsorship*, while the mere make-up of the volume is evidence of the highest technical skill, we recognize among the committee sponsors many eminent names,—Sir Maurice Amos of London, Sr. Rafael Altamire of the World Court, the late James W. Garner of Illinois, M. Gidel of Paris, M. Hans Kelsen of Geneva, M. Lévy-Ullmann of Paris, M. Milliot of Algiers, M. Paul Negulesco of Bucharest, M. Rolin of Brussels—names that are certainly a guarantee of responsibility in professional workmanship.

As to *price*, the 12 volumes for 1938 cost $58. Besides this, the Centre offers a special individual service of texts on other detailed information (corresponding to the individual service of some American concerns). The street address of the Centre is 1 Promenade du Pin, Geneva; the cable code is ABC 7th edition; the cable address is Interlex; and the telephone is 52.330.

We can recommend this highly useful undertaking to all law libraries and practitioners.

JOHN H. WIGMORE

Chicago

Political Philosophies, by Chester C. Maxey. 1938. New York: The Macmillan Company. Pp. 692.—The aim of the author of this book—who is professor of political science at Whitman College—is "to tell the story of the most illustrious political thinkers and their works in such a way as to make them live again in the conscious appreciation of the reader." The method of the author (based on experience with classes, clubs, and other groups) involves the use of four kinds of material—namely, a biographical sketch of the man behind the given philosophy, a concise exposition of the nature and significance of his contribution, a summary of his major doctrines, and some characteristic quotations. Certainly this method is a good one; it has been repeatedly employed by others.

Prof. Maxey's book is welcome because it is all but up to date, because it is judicious and impartial, and because it is well written and eminently readable. The story he tells is a most interesting one when the manner of telling it is not dry, academic, stilted, or rhetorical. He avoids all these mistakes, and his book is unreservedly and heartily recommended to intelligent lay readers.

Nobody invented government. It is not the result of any conspiracy to enslave mankind. It is not maintained solely by aggression, Herbert Spencer to the contrary notwithstanding. Government changes and evolves with economic, geographical, and social conditions. Political philosophies presuppose study, reflection, and criticism of government—authority challenged by reason. Government ultimately rests on physical compulsion, but only in a limited sense. It also rests on the tacit consent of men and women, who simply cannot imagine any society without government.

That we have had divergent theories of government, is a commonplace. What is the situation today? Is a synthesis in process of formation? What of the re-barbarization of government and society by Nazi-ism and Fascism? Is democracy retreating and likely to perish? Are we reverting to absolutism and brute force by so-called "leaders" who are obviously unstable, fanatical, ignorant, and amoral?

These questions are burning and tragic. The story of political philosophies, their rise, modification, de-

cline, and revival, should enable us to answer them with some warranted confidence. No important political school or thinker since Plato and Aristotle is overlooked by Prof. Maxey, with the strange exception of Proudhon and his American follower, Tucker, the real founder of Individualistic and Philosophical Anarchism. The omission is serious.

There are some candid and sound pages in the work on the relation existing between abstract political theory and political practice—statesmanship, diplomacy, administration. The amazing behavior of the Chamberlains and Daladiers in the case of Czecho-Slovakia and other betrayals of democracy and even of authentic national interest, raises new questions which the author does not cover. This suggests an appendix dealing with the contemporary conflict between class bias, perhaps largely unconscious, and national or imperial viewpoints. At any rate, even without an appendix, the work under notice is a veritable tract for the times and a liberal education.

The Child and the State. Select Documents with Introductory Notes, by Grace Abbott, 1938. Vol. I. Legal Status in the Family; Apprenticeship and Child Labor. Pp. 679. Vol. II. The Dependent and the Delinquent Child. The Child of Unmarried Parents. Pp. xvii, 701. Chicago: The University of Chicago Press.

This is not primarily a book for lawyers but rather a source book or case book for social service students. Its general plan is that of a collection of select documents organized into topical sections each prefaced by a chronological and analytical statement. This statement constitutes the thread upon which various citations from laws, judicial decisions, legal commentaries, parliamentary reports, reports of governmental bureaus, international conventions, etc., are to be hung. These sections and introductory statements vary greatly in length and value, depending in part on the predilections of their author.

The chief topics discussed include the legal status of the child in the family, apprenticeship, child labor, dependent children, adoption, mother's pensions, juvenile offenders, illegitimacy, administration of child welfare services. Of these child labor and dependent children receive the bulk of attention, namely, nearly two-thirds of the total textual material.

The author and chief editor is at present Professor of Public Welfare Administration in the University of Chicago, but was formerly Chief of the Children's Bureau of the Federal Department of Labor in Washington. Her qualifications therefore are of the highest to achieve the purpose she had in mind. It would be entirely possible, perhaps, for a professional lawyer to take issue with some of the dicta laid down in this work, but that would be somewhat beside the mark since this is primarily a sociological or social welfare text, and not a text in law. With the rapidly moving and complicated pattern of present social welfare developments, particularly in the United States, it would be inevitable for certain moot points to appear in such a study, and issues to be raised about which informed people could honestly register profound differences of opinion. For example, Miss Abbott criticises the juvenile court on the ground that the court organization has been found to be unsuited to psychiatric treatment. At once the question arises whether the fault, if fault there be, should be attached to the court or to the present state of psychiatry. Moreover, there is a widespread confusion as to the function of the juvenile court, which attempts to require or to conceive of the court as performing the double function of a fact-finding and diagnostic service as well as a treatment agency. Probably everybody would agree with the author that there are certain fundamental difficulties in the use of a court as the exclusive community agency for dealing with the problems of juvenile delinquency; but there may be no good reason for assuming, as she does, that such difficulties might lie in the way of the juvenile court serving as the leading community agency in such a field.

Again in considering the problem of illegitimacy the humane impulse of the author is wholly commendable but when it takes the form of urging upon the state the duty of providing "as far as possible equality of opportunity" for illegitimates there is an obvious failure to grasp basic sociological facts. The common law doctrine of *nullius filius* may be biologically unsound, but social life is not geography nor biology, and social groups have their own methods of insuring group survival. The discriminatory treatment of the offspring of the unmarried is only one example of the conflict between human hungers, animal impulses, instincts, emotions, and the code of protection and controls devised by society over an immemorial period. The rights of children for which Professor Abbott pleads are not the only rights at stake. The reviewer can only express regret that she did not state more specifically what should be done by way of education and improved social and economic conditions to reverse the trend towards a higher illegitimate birth rate. This is admittedly a troublous zone for social workers, legislators and ethical leaders. Scarcely less contentious is the issue over public aid to mothers. Professor Abbott opposes the W.P.A. policy of giving work relief to mothers outside their own homes. She also criticizes the policy of a majority of the states in prescribing a maximum grant, on the ground that such aid should be based on need as determined by budgetary study of each family.

A lawyer might object to the author's treatment of the common law, and particularly to the seemingly gratuitous repeating of Bentham's fling at Blackstone as the defender of the existing order and hence "the enemy of all reform." He might question also the citation of a secondary authority of 1930 on co-guardianship when Professor Vernier's monumental study of much later date was easily available. This raises a final general question as to how such a valuable work as Professor Abbott's might be made even more valuable. Things are moving so fast in American social service history that scarcely has a massive compilation been printed before it is out of date. Perhaps publishers in this field may have to come more and more to the method of issuing their publications in loose leaf form!

ARTHUR J. TODD
Northwestern University

Restatement of the Law of Torts, As Adopted and Promulgated by the American Law Institute at Washington, D. C., May 12, 1938. Vol. III. Divisions 3-9: Absolute Liability, Deceit, Defamation, Disparagement, Unjustifiable Litigation, Interference in Domestic Relations, Interference with Business Relations (Part 1).

1938. St. Paul: American Law Institute, Publishers Pp. xxvi. 759.

The first volume of the Restatement of Torts covered intentional harms to persons, lands and chattels; the second covered negligence; this third volume deals with such important torts as absolute liability, deceit, defamation, interference with business relations, interference with domestic relations. In reviewing this latest volume it is obvious that it is impossible to enter into any general evaluation of the Torts Restatement as a whole, while, in addition, a long and detailed review would be necessary to deal with the problems raised in volume III itself. Within the space of a short review it is only possible to point out the wide importance of the volume and its position as a worthy successor to its predecessors and then to draw attention to one or two striking points of view. Before doing so, it is only proper that a generous word of praise should be given to Professor F. H. Bohlen, the Reporter, who has now added to his well-established reputation as a constructive critic in the field of torts. He has been ably assisted by Professor F. V. Harper, whose contributions to the literature of torts—especially his text-book—have made the theory of the subject more integrated and challenging for students. His text-book is a new approach in torts seen through the reasoning of a mature and scholarly individual mind. Professor Shulman has been the Reporter for the division on business relations, and it is not too much to say that he presents aspects of tort situations which are destined to become more and more important and to demand the most active study and practical consideration.

In the division on "absolute liability" we regret, with respect, the use of the term, which is not quite satisfactory and does not clearly bring out the particular concept which it is intended to cover. Doubtless it is consecrated by use, but the Restatement here might well have exercised an inventiveness such as it has shown elsewhere. Be that as it may, readers will turn with interest to critical discussion of what is known as the rule in *Rylands* v. *Fletcher*, a subject to which Professor Bohlen has already made brilliant contributions. Section 520 is a much more satisfactory expression of the rule than is found in most text-books, and we hope for a wider adoption of its point of view, remembering, however, that the Institute has entered a *caveat* as to whether the factual situation in *Rylands* v. *Fletcher* disclosed an ultra-hazardous activity.

A similar modern approach is to be found in the discussion of defamation, especially in connection with the distinction between libel and slander, which includes an admirable historical setting. While the older concept that libel is more socially dangerous than slander colors this division—a point from which I respectfully dissent—yet the test for distinguishing libel from slander depends not on the older theories but takes into account modern conditions: "The area of dissemination, the deliberate and premeditated character of its publication and the persistence of the defamatory conduct are factors to be considered in determining whether a publication is a libel rather than a slander." (Sec. 568(3)).

Space prohibits any further comments, though I should have liked to deal with issues in connection with domestic relations—a subject on which I am specially interested and one far too much neglected in the teaching of torts. It only remains to add that the volume is fully worthy of the Institute's activities. It is gratuitous to say that any one seriously interested will not merely read but will attempt to digest points of view which are of great social importance. The volume is not one merely for law schools. The practical lawyer throughout the common-law jurisdictions of the world may well turn to this volume, if not for authority, at any rate for newer forms of analysis, which may, as occasion arises, be presented in argument in a field of law by comparison singularly fluid and elastic and open to wide opportunities for judicial law-making.

W. P. M. KENNEDY

University of Toronto School of Law

Crime and Punishment in Early Maryland, by Raphael Semmes. 1938. Baltimore: Johns Hopkins Press. Pp. 334.—This book is an interesting abstract of the *Archives of Maryland* in which the Maryland Historical Society has published in full the proceedings of the assembly, council, provincial court, court of chancery, and the county courts.

The author finds that theft was rare because there was little worth stealing, and removal from the colony was almost impossible. Discipline of indentured servants furnished a great problem. Sex offenses and violence were common. Witchcraft was occasionally found. Before 1674 few counties had jails. Common folk who disturbed the peace of the Lord Proprietor, his rule and dignity, received corporal punishment; gentlemen were merely fined so many pounds of tobacco. If sentenced to the gallows one might escape by pleading benefit of clergy: that is, by proving ability to read and write; however one must be branded on the hand so that this plea might not be entered a second time.

Few of the men who represented litigants in seventeenth century Maryland, and few of the judges, had received legal training in England before coming to the colony; nevertheless they managed to follow the procedure and practice of English courts. An attorney in fact had only to show his "deputation under handwriting" to be allowed to appear. For his services in county court he might collect sixty pounds of tobacco, worth ten shillings; in chancery court he might ask eight hundred pounds.

JAMES HARGAN

New York City

Leading Articles in Current Legal Periodicals

BY KENNETH C. SEARS

Professor of Law, University of Chicago

ADMINISTRATIVE LAW

IMPLEMENTATION Of Statutes, Gregory Hankin, 27 The Georgetown L. J. 424. (F. '39; Washington, D. C.) The title is misleading in that the discussion is a criticism of the first two sections, only, of the proposed bill of the American Bar Association on national administrative agencies. The first section provides for implementation, and the second for court review of the resulting rules. The necessity for implementing complex legislation is admitted. "The object is a very laudable one, and has our hearty support." Then all praises cease. The two sections are not consistent with a declaration of policy of the association; and a detailed consideration of the wording

of the proposed law brings forth consistent disapproval. No substitute for the sections disapproved is offered. If all of the objections presented are valid it would appear doubtful whether any general legislation dealing with this subject matter can be drafted.

ADMINISTRATIVE LAW

Exhaustion Of Administrative Remedies, Raoul Berger, 48 Yale L. Jour. 981, (Ap. '39; New Haven, Conn.)

An exploration is made of the rule that "Administrative remedies must be exhausted before resort is had to the federal courts." These factors have been important in the development of rule: (1) need for orderly procedure; (2) requirements of comity; and (3) the analogous rule that a litigant may not have equitable relief where he has an adequate remedy at law. Major attention is devoted to the varying application of the rule and of the exceptions to the rule that have been asserted and debated. The author is in favor of a crystallization of the rule devoid of its discretionary feature, because this element is the source of much wasteful litigation.

BAR ADMISSION

An Overcrowded Bar?—The Price Of Certain Remedies, Francis M. Shea, 39 Columbia L. Rev. 191. (F. '39; New York City).

The Bar is troubled with too many members and organizations of laymen are competing for the services to be rendered. Shall we reduce the number entering the profession? A quota system has its adherents but is not favored. It may be expected to discriminate unfairly. There are three other more subtle proposals: (1) more efficient committees on character and fitness; (2) increase the duration of legal education; and (3) make law schools the method of entrance to the Bar and then eliminate many of them by setting standards that they could not meet. The first of these more subtle plans is opposed. It is futile to believe that even on adequate data we may predict upright or dishonest future conduct at the Bar. Furthermore, if "character impressions become the effective tests of admissions, they will not be applied with rigorous honesty." As to the third proposal, the less well reputed law schools are defended as serving a democratic government by affording legal education to persons with small means and a place for the training of lawyers who will be content to return to the small cities to practice. By way of an affirmative program the following is stated: (1) exacting higher standards of attainment for admission to law schools with the corollary that where state universities do not exist, the state subsidize a student of high rank; (2) no objection to the immediate elimination of the proprietary school; (3) less lawyers in the large metropolitan centers and a greater percentage of them in the smaller communities and (4) win back law business "which we have neglected and consequently lost."

CONSTITUTIONAL LAW

A Constitution for an Indefinite and Expanding Future, Thomas Reed Powell, 14 Washington L. Rev. 99. (Ap. '39; Seattle, Wash.)

The style is the man and T. R. P. has an unmistakable style. He is a girdiron in his own proper person. The great receive their sizzling. Thus, Mr. Justice Brandeis in Erie Railroad v. Tompkins "took the lead in violating many of the canons of constitutional adjudication upon which he has often strongly insisted. . . . Mr. Justice Butler in dissent seems to be writing the customary Brandeis dissent on the question of judicial manners. Had Mr. Justice Brandeis been inclined to defend himself, he might have found excellent support in earlier conduct of Mr. Justice Butler." On the contrary, Mr. Justice Black's first year, in certain respects, is reviewed with tolerance, at least, and that from T. R. P. is not a bad compliment. The major thesis of this address of last summer before the Washington State Bar Association Convention was "that in many particulars the Constitution has no meaning until meaning is given to it by political practice or by judicial decree, and that the meanings thus given vary greatly in tone and color from time to time." This idea is familiar but the contents of the address constitute unusually interesting reading.

CONSTITUTIONAL LAW

Paul v. Virginia: The Need for Re-examination, Peter R. Nehemkis, Jr., 27 The Georgetown L. Jour. 519. (Mr. '39; Washington, D. C.)

The need for re-examination would seem to be for the purpose of overcoming the effect of Paul v. Virginia. Otherwise, what is the occasion for re-examination? Something of the history of insurance in the United States, its abuses, the legislative reforms, and then the legislative punishment of the companies to serve local desires, are set forth. The desire to be rid of "unfair state legislation" and possibly to secure a national incorporation act led to the selection of Paul v. Virginia as a test case. The opinion is reviewed in both phases: privileges and immunities, and commerce. The Deer Lodge County case of 1913 is an application of stare decisis. A quarter of a century has passed since then and now one of the significant aspects of the insurance business is the control of tremendous pools of capital and their relation to the national economy. The discussion stops with this question: "Would the Supreme Court, upon an appropriate record involving an act of Congress . . . perpetuate its ruling that insurance is not commerce?"

GOVERNMENT

Popular Legislation In California, Max Radin, 23 Minnesota L. Rev. 559. (Ap. '39; Minneapolis, Minn.)

In 1870 a plea was made in the Illinois constitutional convention that it be made possible for the voters to vote upon the amendment of two articles of the constitution at a general election. The plea was rejected and the voters of the future were restricted to the amendment of a single article. With this attitude should be contrasted the experience in California. The contrast should be of general interest to those concerned with the affairs of government. A review of an unpublished document, entitled "A Study of Direct Legislation In All of Its Forms as Exemplified in the Government of the State of California in State Affairs Only: From the Adoption of the Constitution of 1849 to the Presidential Election of 1928" discloses that during that period, 384 constitutional amendments, propositions, initiated acts, and referendum appeals were submitted to the California voters. 233 were adopted and 151 were rejected or failed. According to the standard of the well known Commonwealth Club, the voters were right in nearly 80% of their votes. California did not adopt the initiative and referendum

until 1911. From 1912 to 1928 the average vote on these questions was only 44.86% of the total vote cast at the elections. Professor Radin completes the story for the elections of 1932, '34, '36, and '38 at which the California voters were presented with ballots containing 20, 23, 23, and 25 questions, respectively, involving the adoption of statutes and constitutional amendments. In these four elections the average vote on the questions was 60, 68, 73, and 76%, respectively, of the total vote cast. As a result of the four elections 36 statutes and amendments were adopted and 55 failed or were rejected. Professor Radin ventures no final conclusions. "But enough, I think, has been given to make it clear that the common objections to popular legislation are quite wide of the mark. On purely technical matters, on the basis of these figures, the popular judgment is likely to be better than that of the legislature and certainly less open to suspicion. On questions of important progressive reforms, it is vastly more likely to reach an acceptable conclusion."

LEGAL BIOGRAPHY

John Marshall and the Campaign of History, Max Lerner, 39 Columbia L. Rev. 396. (Mr. 39; New York City.)

Marshall's legal career is placed under a candid microscope and the result is not flattering. The style of the critic is good provided one can stand the attack upon a legal hero. But the author will hardly convince most lawyers of many of his points. The legal mind may be a funny thing, but whatever it is, Lerner does not seem to have it in great measure. On the contrary he is not free from the theatrical. Marshall "was to be a magnificent dictator" . . . He was to cast a spell over his associates that seemed "almost diabolical." The general thesis is that Marshall was the strategic link between capitalism and constitutionalism in the campaign of history. The famous opinions of the chief justice pass in review. Marbury v. Madison in the main is "a vast *obiter dictum* that was sheer political maneuver" and "every part of its reasoning has been repudiated even by conservative commentators." In apparently condemning the decision no distinction is made between the need for judicial review of state action and national action. Marshall gave the contract clause "a sanctity overriding every consideration of public policy or economic control." Thus Fletcher v. Peck was a bad error. Worse, while this case was being fought out, Marshall was involved in land litigation which invoked the same principle. That likely will appeal to lawyers as a false understanding of the decision in Fairfax Devisee v. Hunter's Lessee. Naturally, the Dartmouth College decision is also condemned. Nothing gathers praise until McCulloch v. Maryland and Gibbons v. Ogden are reviewed. How these two decisions would have been possible without the doctrine of judicial review of state legislative acts is not explained. On the contrary we have what seems to be an overstatement, "Gibbons v. Ogden contains what is, at least by implication, one of the most forceful arguments against judicial review of congressional legislation that we have in literature."

American Law Institute Completes Monumental Task, Etc.

(*Continued from page* 476)

The social features of the meeting were enjoyable. The reception by Mrs. Roosevelt for the ladies, Friday afternoon at the White House, was largely attended, and that by the Council to the members, guests and ladies, in the Ball Room of the Mayflower Hotel on Wednesday evening, afforded a prized opportunity for the reunion of old friends. The Annual Dinner, on Friday evening, presided over by President Pepper, has become a notable feature of the Institute meeting and is looked forward to with special interest. As usual the capacity of the room was taxed. The dinner addresses by John Lord O'Brian, former Special Assistant to the Attorney General of the United States and now Special Counsel for the Tennessee Valley Authority, and by Edmund M. Morgan, Professor of Evidence in the Harvard University Law School, maintained the high standard set by Institute dinner speakers on many previous occasions.

Disturbing Trends of the Present Time

Mr. O'Brian's address was serious in tone but held the entire attention of his hearers. He spoke of two serious present-day trends which were disturbing to one bred in the ways of the common law; one was the decreasing importance attached to experience and study of history, the other was "the diminishing importance attached to the individual citizen and the increasing tendency to regard him in the abstract light of being important chiefly—sometimes only important—in relation to a group or a class or nation. . . ."

"In short," he said, "all the conditions of contemporary civilization seem to be combining to discourage the self-confidence of the individual citizen and to play down the fact that it is upon his sense of responsibility and of personal conscience that the American State depends in the last analysis. And yet the one lesson of history upon which all of us agree is that 'the thing that above all ruined ancient society was the increasing withdrawal of responsibility from the individual citizen.'

"And in the field of the law, whatever the cause, apparently the teachings of history and experience are being minimized in contrast with the emphasis everywhere given to theories grounded in sheer logic and in the processes of rationalization. The chief complaint made by many against some of the more recent Regulatory Statutes is that they do not truly reflect progressive thought. They disregard too frequently the habits and instincts, the genius if you will, of the people. In short, that these Statutes do not sufficiently regard the element of persuasion. . . ."

Mr. O'Brian made these pointed observations as to the lawyers' duty and the attitude of the average citizen in the face of growing bureaucratic conditions of today:

The Important Task of Lawyers Today

"As lawyers our important task today is to persuade the average layman that the processes of law are reasonable processes. To do this we must make those processes reasonable in themselves. Of late there has been a tendency even in some of our Higher Courts

to regard matters of procedure as of relatively minor importance, but the average man is not nearly so much interested in concepts of abstract justice or even in substantive rules of law as he is in one single elementary feature of procedure. He is interested always and above all else in the practical question of whether he is to have a fair hearing. By instinct and inheritance he clings to the conviction that it is his most fundamental right. He demands what the Chief Justice in a noble phrase recently called 'the tradition of the just Judge,' and like the Chief Justice he puts first the demand that the requisites of ordinary fair play be observed in every variety of legal procedure.

"Increasing complexity of business relationships, increasing complexity of laws and regulations make it all the more important that all forms of legal procedure shall be made consonant with these most fundamental of all principles in law and Government. Because human nature is what it is, the processes of centralization in Government are always bringing new threats of new tyrannies. As Locue said: 'Wherever law ends tyranny begins.' Confronted with this increasing and apparently inevitable centralization and accompanying growth of bureaucracy, the problem of keeping alert the individual's sense of responsibility and of encouraging individual initiative become steadily more and more acute. . . ."

The Crucial Question That Is Overlooked

Speaking of the functioning of administrative law, Mr. O'Brian declared that we have been overlooking the important point that the crucial question is how findings of fact are made and who is to make those findings. More and more the courts are making it clear that this is the heart of the problem. As a result, the general public, for the first time, are becoming aware of what is to them the surprising fact that the findings of fact which are decisive of the issues in most controversies are often not only influenced by the prosecuting attorneys, but in some cases actually made by the prosecuting attorneys. This is where the layman comes in with his protest." He continued:

"It is a serious mistake to treat this problem as if it concerned only technicalities in legal procedure. The widespread popular feeling of revulsion against the prosecutor acting as judge is increasing, not decreasing. Of course, we know that in our time social forces are operating which inevitably narrow the scope of the individual's activity, and of his property rights. But his instinctive desire for impartial justice—his rightful demand for a fair tribunal and for an impartial hearing—is quite another matter. And, I submit to you, surely it is primarily our duty as lawyers to see that those oldest of all rights are secured to the citizen promptly and without qualification. . . ."

Professor Morgan has recently been appointed Reporter for the model Code of Evidence to be prepared by the Institute and this fact naturally tinged his remarks to the diners. However, it certainly did not depress his spirits for his talk was entertainingly humorous throughout. Here, for instance, are some of his observations on the task which confronts him:

Sacrilegious Nature of Evidence Code Plan

"I have been commissioned to produce for ultimate disposition by you in the next two years a model Code of Evidence. Even the thought of undertaking such a sacrilege is abhorrent. If a code should, for example, simplify presumptions, where should I get material for my annual Law Review article? Then I might have to write something that the ordinary lawyer would understand. Now I can produce a document explaining the eight different views recognized by various courts, demonstrating the difficulties of framing understandable charges under each of them. I can expose the three different interpretations put upon statutory presumptions, the eight effects which may be given to each and the five constitutional provisions which each may be thought to impinge, thus raising one hundred and twenty possible constitutional problems.

"When I get through, I have a manuscript which is erudite and baffling. When Judge Moss of the Rhode Island Supreme Court gets such a contribution, he tells me it has a headache on every page. When one of my former students receives it, he writes: 'Even after reading your article, I wish you a Merry Christmas.' Am I to be forced to forego these pleasures? Not every law professor has the privilege of giving a Supreme Court Justice a headache.

Taking All Joy Out of a Lawsuit

"The new code must also deal with hearsay. If that is made to conform to the layman's idea of what is rational, another of my means of supplying tangible evidence of productive scholarship, which is what all University Presidents demand, will be gone. The New Federal Rules have taken most of the mystery out of procedure, and made the use of surprise tactics at the trial almost impossible. And now if the Institute comes along and eliminates the entrancing intricacies and glorious refinements of the law of Evidence, all the joy will be taken out of a lawsuit.

"I protest against the notion that a rule of evidence should be changed just because it doesn't make sense to a layman. I have the authority of the great Lord Coleridge to support me. He declared it to be fallacious to suppose 'that whatever is morally convincing and whatever reasonable beings would form their judgments and act upon may be submitted to a jury.' I am sure you need no higher authority than that. Just let me put to you some examples of the beauties of the present system that are in danger unless you are watchful."

Professor Morgan proceeded to illustrate the numerous inconsistencies in the field of Evidence which would be brought to light by a series of legal proceedings resulting from an automobile accident, and added this comment:

Not Purple Patches But Representative Instances

"These are not mere purple patches upon the fabric of the present law of Evidence. They are representative of the intellectual delights of the subject which requires five thousand large pages to expound. They deserve the reverential respect of all true disciples of Blackstone; and I now serve notice upon you that you must not expect me to deal with them ruthlessly or irreverently."

AMERICAN BAR ASSOCIATION JOVRNAL

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COME TO SAN FRANCISCO

This issue of the JOURNAL comes to the desks of its readers at a time when many members of the Association are making their final decisions as to attending the Annual Meeting in San Francisco during the week of July ninth. The attractiveness of this year's assembly of American lawyers should lead to affirmative decisions in many instances.

California's traditional hospitality will be at its best, in the carrying out of the plans for the entertainment of the visitors. The outlined program for the meeting shows that many important matters are to be considered and acted upon, in this deliberative gathering—also, a number of addresses which will be worth going far to hear. Due to the distances, the meetings of the Association are not usually the largest when held on the West Coast; but experience has established them as among the most genuinely enjoyable.

At a time when the law-governed world has hardly been released from grave uncertainties, and the problems which beset the profession and the public in our own land leave anxiety uppermost in many minds, it is appropriate that American lawyers should come together for counsel and for reassurance. Every member of the Association who can do so will find it well worth while to be on hand in San Francisco on July tenth.

THE WINNING ROSS ESSAY

The wise and lasting benefaction of the late Judge Erskine M. Ross, through the agency of the American Bar Association, is again demonstrated in the successful essay in this year's competition for the $3,000 prize resulting from Judge Ross' bequest. The victorious answer to the question, "To What Extent Should the Decisions of Administrative Bodies be Reviewable by the Courts?" will be heralded as a notable contribution to an informed public opinion upon a most vital subject, and is a fresh confirmation of the testamentary wisdom of the modest son of California who ranked the American Bar Association high in the disposition of his life earnings.

The Ross bequest is administered by the American Bar Association, which selects from year to year the subject and makes the award; and the competitors for its substantial prize are members of the Association. This year's competition was entered by many of the outstanding lawyers, jurists, and law teachers, throughout the land. That the 1939 contest was won by a thoroughly representative American lawyer and good citizen, who has struggled with the problems of the race for place in active practice in a small city, has served as President of a great State Bar Association, has been a member of the American Bar Association during nearly twenty years, and is now a gifted teacher and scholar in the field of law, is a consummation such as Judge Ross would have wished.

What better gauge could be found for the rapidly shifting cross-currents which lately have dominated the American scene, than the subjects of the Ross Essay competition during the six years since its founding? They are:

1934: "Administrative Agencies in Government and the Effect Thereon of Constitutional Limitations"

1935: "The Barrister and the Solicitor in British Practice: The Desirablity of a Similar Distinction in the United States"

1936: "The Origin of the Rule-Making Power and Its Exercise by Legislatures"

1937: "The Administration of Justice as Affected by Insecurity of Tenure of Judicial and Administrative Officers"

1938: "The Extent to which Fact-Finding Boards Should be Bound by Rules of Evidence"

1939: "To What Extent Should the Decisions of Administrative Bodies Be Reviewable by the Courts?"

It is significant also that the successful competitors have come, in sequence, from Washington, D. C.; Chicago, Illinois; New York City; Yakima, Washington; Portland, Oregon; and now Durham, North Carolina.

Each of these winning essays was and is an outstanding contribution to the literature,

source material and public policy of its subject. An impressive aspect of many of this year's essays was the extent to which previous essays for the prize were cited and quoted, in the extensive documentation through footnotes. A still more gratifying and reassuring feature of the documentation was its revelation of the large extent to which the literature and the source material in the field of administrative law are to be found, upon research, in the columns of the JOURNAL and in the Annual Report Volumes of the American Bar Association. The usefulness of accumulated sets of the Annual Report Volumes and of files of the JOURNAL, with the indices now to be found in each Annual Report, was strikingly exhibited. No one who read many of this year's essays could fail to be impressed that through these instrumentalities the Association has made an enduring contribution to an enlightened public opinion in America.

The winning essays thus far will soon be published in an attractive brochure, available to members of the Association upon request. The volume containing the six essays will be well worth a place in any library. This issue of the JOURNAL contains the winning essay in 1939. So great was the merit of several other essays, each from varied points of view, that subsequent issues will publish several of the essays which were excellent but did not receive the award. Judge Ross' bequest has been judicially construed to provide for a single prize; the committee has not deemed a bestowal of "honorable mention" to be within its province; but the essays which will be published have been selected from among the many which are well worth reading. Collectively, the essays will constitute probably the most notable symposium ever published, on the much-discussed subject of judicial review of administrative decisions. Widely differing suggestions as to scope and solution are presented. Needless to say, in making the award, the committee was not controlled or influenced by agreement or nonagreement, on their part or on the part of the Association, with any of the views or contentions expressed. The merit of the essay was the sole standard.

The subject of the essay which will receive the 1940 prize will be selected and announced by the Board of Governors at the Annual Meeting in San Francisco next month. The number of competitors for this great honor and substantial money prize is likely to increase beyond the ninety-two who took part this year. In conclusion, it may be noted that probably in no other way could Judge Ross have provided for himself so appropriate and lasting a memorial, as he did by making the American Bar Association the agency for administering a fund which will enable a perennial contribution to the discussion of National questions.

AMENDMENTS TO THE CONSTITUTION AND BY-LAWS OF THE ASSOCIATION

Elsewhere in this issue of the JOURNAL will be found the official notification of the filing of various proposals to amend the Constitution and By-laws of the Association. These are published in accordance with the constitutional requirements for advance notice to members, and will be voted on at the San Francisco sessions of each the Assembly and the House of Delegates next month.

Meanwhile, these proposed amendments should be read and studied by every member of the Association. Those who are not going to San Francisco should make known their views to those who are going, particularly to their State Delegate and the representatives of their State Bar Association.

Some of the proposed amendments are noncontroversial in character, being designed for clarification in the interests of certainty or convenience, where the need has been developed by experience. Other amendments present substantial questions of Association policy; e.g., the discontinuance of long-established Committees, small in size and appointed by the President of the Association, which in the past have handled vital matters of policy as to legislation. In some instances, it is proposed to vest the functions of these Committees in existing Sections, in another instance, to create a new Section. Such changes are favored by those who believe that the Association gains through the larger opportunities for discussion, and for greater diversification in Committee service, which are afforded in Section meetings. Such changes are likely to be opposed by those who feel that the multiplying of Sections and Section functions creates administrative and financial problems not yet solved, and that the unity of the Annual Meeting loses through division and sub-division into many contemporaneous and specialized sessions.

Then there are varying proposals to amend the Constitution as to the manner of nominating and electing the officers and Board of Governors of the Association. This is a recurring issue, old proposals are renewed, and new ones are brought forward. Space does not permit even summary of the arguments pro and con. Each member of the Association who can be present in San Francisco should do so, to hear the animated debate and then form and vote his own opinion.

DECISIONS ON THE FEDERAL RULES OF CIVIL PROCEDURE

FROM BULLETINS XXVI, XXVII, XXVIII AND XXIX ISSUED BY THE DEPARTMENT OF JUSTICE

RULE 2—One Form of Action

Ben Williamson, Jr. v. Columbia Gas & Electric Corporation. (District of Delaware, NIELDS, D. J., Apr. 12, 1939).

1. The fact that the new Rules substituted a single form of civil action for old forms of actions at law and in equity did not abrogate the statutes of limitations applicable to the several forms of actions theretofore existing.

2. An action to recover treble damages for violation of antitrust laws is an action on the case and is governed by the State statute of limitations applicable to actions on the case.

RULE 6—Time—Subdivision (b)—Enlargement

Paul Kohloff, et al. v. Ford Motor Company. (Southern District of New York, HULBERT, D. J., Apr. 21, 1939).

During the pendency of a motion to quash service of summons as to one of two claims for relief, plaintiff's motion for judgment by default as to the other claim should be denied, even though time to answer has expired.

George Ainsworth v. Gill Glass & Fixture Company. (Circuit Court of Appeals for the Third Circuit, MARIS, C. J., May 5, 1939).

An order of the district court extending the time to file the record on appeal, which is entered after expiration of time prescribed by the Rules, is invalid if it does not set forth that it was made upon motion after notice and that failure to file such record within the 40-day period was the result of excusable neglect.

RULE 7—Pleadings Allowed; Form of Motions—Subdivision (b)—Motions and Other Papers

George Barrezueta v. Sword Steamship Line, Inc. (Southern District of New York, HULBERT, D. J., Apr. 5, 1939).

A motion which is so involved and indefinitely phrased as to be confusing constitutes failure to proceed in accordance with the Rules and should be denied without prejudice.

Subdivision (c)—Demurrers, Pleas, Etc., Abolished

United States of America v. Ezekiel C. Smith. (Eastern District of Pennsylvania, DICKINSON, D. J., Apr. 12, 1939).

A demurrer coming on for hearing subsequently to the effective date of the new Rules may be treated as a motion to dismiss. (Rule 86)

RULE 8—General Rules of Pleading—Subdivision (a)—Claims for Relief

Charles E. Kraus v. General Motors Corporation, et al. (Southern District of New York, CONGER, D. J., Mar. 2, 1939).

A complaint, in an action on a contract, which alleges the contract, performance by plaintiff and failure to perform on the part of defendant, is good as against a motion to dismiss for insufficiency.

Martin Sierocinski v. E. I. DuPont DeNemours & Co. (Circuit Court of Appeals for the Third Circuit, BIDDLE, C. J., Apr. 24, 1939).

1. In action against the manufacturer of dynamite caps to recover for personal injuries resulting from the explosion of one of the caps during the process of crimping it, plaintiff alleged the negligent manufacture and distribution of the cap in such fashion as to make it explode when crimped. The Circuit Court of Appeals in reversing order dismissing complaint for failure to set forth any specific act of negligence, held that plaintiff need not plead evidence, that "a short and plain statement of the claim showing that the pleader is entitled to relief" is sufficient as a pleading and that further information if needed to prepare a defense, can be obtained by interrogatories. (Rules 8 (e) and 33).

2. Form 9 in Appendix to Rules approved.

[Editorial Note: See opinion in this case in 7 Bull. 9 on motion for a more definite statement of claim. (25 F. Supp. 706)].

Subdivision (e)—Pleading To Be Concise and Direct; Consistency

Charles E. Kraus v. General Motors Corporation, et al. (Southern District of New York, CONGER, D. J., Mar. 2, 1939).

The complaint in an action on a contract for exclusive use of a patent may join a claim for failure to pay royalties and a claim for failure to use plaintiff's alleged patent, even if they are inconsistent.

The complaint may contain inconsistent claims in the alternative and plaintiff should not be required to elect upon which theory he intends to rely.

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In action against the manufacturer of dynamite caps to recover for personal injuries resulting from the explosion of one of the caps during the process of crimping it, plaintiff alleged the negligent manufacture and distribution of the cap in such fashion as to make it explode when crimped. The Circuit Court of Appeals in reversing order dismissing complaint for failure to set forth any specific act of negligence, held that plaintiff need not plead evidence, that "a short and plain statement of the claim showing that the pleader is entitled to relief" is sufficient as a pleading and that further information if needed to prepare a defense, can be obtained by interrogatories.

Sun Oil Company, a Corporation v. Otto Pfeiffer, et al. (Western District of Oklahoma, VAUGHT, D. J., Apr. 29, 1939).

A motion to dismiss on the ground that the amount in controversy is less than $3,000.00 should be denied if the complaint alleges that the amount involved, exclusive of interest and costs, is in excess of $3,000.00, and nothing else appears in the record with respect to the amount in controversy. (Rule 12 (b))

Watts Electric & Manufacturing Company v. United-Carr Fastener Corporation. (District of Massachusetts, MCLELLAN, D. J., Apr. 24, 1939).

In an action for declaratory relief adjudging that plaintiff did not infringe defendant's patent, a motion by the latter to strike from the complaint allegations of unsuccessful attempts to intimidate plaintiff and attempts surreptitiously to obtain an assignment of an application for patent upon plaintiff's device, should be granted as failing to comply with the requirements of simple, concise and direct pleading.

RULE 10—Form of Pleadings—Subdivision (b)—Paragraphs; Separate Statements

William S. Schoenberg v. Decorative Cabinet Corporation, et al. (Eastern District of New York, MOSCOWITZ, D. J., May 1, 1939).

1. Defendant's motion to require plaintiff to number the paragraphs of his complaint should be granted.

2. Defendant's motion for permission to inspect and photograph a model should be denied, with leave to renew, in the absence of showing of the existence of the model. (Rule 34)

RULE 12—Defenses and Objections—Subdivision (b)—How Presented

Charles E. Kraus v. General Motors Corporation, et al. (Southern District of New York, CONGER, D. J., Mar. 2, 1939).

1. A complaint, in an action on a contract, which alleges the contract, performance by plaintiff and failure to perform on the part of defendant, is good as against a motion to dismiss for insufficiency. (Rule 8 (a)).

2. The complaint in an action on a contract for exclusive use of a patent may join a claim for failure to pay royalties and a claim for failure to use plaintiff's alleged patent, even if they are inconsistent. (Rule 8 (e)).

3. The new Rules were applied by the court to a complaint served over a year prior to their effective date, on a motion to dismiss coming on for hearing after such date. (Rule 86).

4. The complaint may contain inconsistent claims in the alternative and plaintiff should not be required to elect upon which theory he intends to rely. (Rule 8 (e)).

5. Although a complaint contains superfluous matter it should be disturbed with caution unless it clearly appears that such matter has no possible bearing upon the subject matter of the litigation. (Rule 12 (f)).

Sun Oil Company, a corporation v. Otto Pfeiffer, et al. (Western District of Oklahoma, VAUGHT, D. J., Apr. 29, 1939).

A motion to dismiss on the ground that the amount in controversy is less than $3,000.00 should be denied if the complaint alleges that the amount involved, exclusive of interest and costs, is in excess of $3,000.00, and nothing else appears in the record with respect to the amount in controversy.

Subdivision (c)—Motion for Judgment on the Pleadings

Phoenix Hardware Company v. Paragon Paint & Hardware Corporation. (Eastern District of New York, CAMPBELL, D. J., Apr. 18, 1939).

Plaintiff is not entitled to summary judgment or to judgment on the pleadings, if a material issue of fact is raised by the answer.

A defense of *res judicata* is insufficient and does not warrant summary judgment for the defendant or to judgment on the pleadings if the claim is based on facts transpiring subsequently to the prior judgment.

Subdivision (e)—Motion for More Definite Statement or for Bill of Particulars

Paul M. Mahoney v. Bethlehem Engineering Corporation. (Southern District of New York, LEIBELL, D. J., Apr. 19, 1939).

Suit was brought by beneficiary of contract. There was a dispute as to whether contract was to be performed in Massachusetts or in New York, since the Massachusetts law did not permit a third party to sue on a contract made for his benefit, while the New York law did. *Held,* defendant's motion for bill of particulars stating places where contract was made and was to be performed, should be granted.

Daniel Guerin v. Portland Trawling Company. (District of Massachusetts, MCLELLAN, D. J., Apr. 24, 1939).

In an action for personal injuries alleged to have been sustained on board a vessel, defendant is entitled to a bill of particulars stating the time of day of the injury, plaintiff's location at the time, the part of the vessel causing the injury, whether plaintiff was alone or working with other members of the crew, and in what respects the defendant was negligent.

Arden L. Norton, et al. v. Cooper Jarrett Inc., et al. (Northern District of New York, COOPER, D. J., Apr. 26, 1939).

The "contention" of a party is made by pleadings and is not a proper subject of examination by deposition. It may, however, be obtained by a motion for a bill of particulars.

John F. Brinley v. Alvin B. Lewis. (Middle District of Pennsylvania, WATSON, D. J., May 1, 1939).

Motion for more definite statement or for a bill of particulars should be denied and defendant should proceed by discovery if the complaint is not vague or ambiguous and the information is not needed to enable defendant to plead. (Rule 26 (a))

Subdivision (f)—Motion to Strike

Charles E. Kraus v. General Motors Corporation, et al. (Southern District of New York, CONGER, D. J., Mar. 2, 1939).

Although a complaint contains superfluous matter it should be disturbed with caution unless it clearly appears that such matter has no possible bearing upon the subject matter of the litigation.

Phoenix Hardware Company v. Paragon Paint & Hardware Corporation. (Eastern District of New York, CAMPBELL, D. J., Apr. 18, 1939).

Plaintiff's motion to strike defenses which were held insufficient at a former trial should be granted.

E. E. Gregory, et al. v. Royal Typewriter Company, Inc., et al. (Southern District of New York, HULBERT, D. J., Apr. 20, 1939).

In an action for patent infringement, plaintiff's motion to strike a counterclaim for declaratory judgment, which alleged non-infringement and invalidity, should be denied since, without such counterclaim, plaintiff could dismiss his action and thus leave undetermined the issue of validity.

Watts Electric & Manufacturing Company v. United-Carr Fastener Corporation. (District of Massachusetts, MCLELLAN, D. J., Apr. 24, 1939).

In an action for declaratory relief adjudging that plaintiff did not infringe defendant's patent, a motion by the latter to strike from the complaint allegations of unsuccessful attempts to intimidate plaintiff and attempts surreptitiously to obtain an assignment of an application for patent upon plaintiff's device, should be granted as failing to comply with the requirements of simple, concise and direct pleading. (Rule 8 (e))

RULE 14—Third-Party Practice—Subdivision (a)—When Defendant May Bring in Third Party

P. Edwin Tullgren v. Charles Jasper, et al. v. The Maryland Casualty Company. (District of Maryland, CHESNUT, D. J., May 1, 1939).

1. In a personal injury action brought jointly against the owner of the taxicab in which plaintiff was a passenger at the time of the accident and against the owner of the truck with which the taxicab collided, the owner of the truck may not bring in the insurer of his co-defendant as a third-party defendant.

2. The defendant in a personal injury action may bring in his own liability insurer as a third-party defendant.

3. Third-party procedure is probably ancillary to the main action and if jurisdiction of the court on the ground of diversity of citizenship has properly attached to the action between the original parties, diversity of citizenship between the third-party plaintiff and the third-party defendant is not necessary. However, question was not decided in this case, as it was determined on other grounds.

RULE 16—Pre-Trial Procedure; Formulating Issues

H. A. Wisdom v. The Texas Company, a Corporation. (Northern District of Alabama, Southern Division, MURPHREE, D. J., Apr. 13, 1939).

Plaintiff's failure to appear at a pre-trial conference ordered by the court, advance notice of which was given to the attorneys for both parties, constitutes a failure to prosecute and failure to comply with the Rules, and defendant's motion to dismiss the action on the merits should be granted. (Rule 41 (b)).

The Cumberland Corporation v. McLellan Stores Company, et al. (Southern District of New York, HULBERT, D. J., Apr. 13, 1939).

A motion for the production of voluminous documents and for taking of lengthy depositions, made four years after institution of suit, during which time an action involving substantially the same issues was commenced in another court in which depositions were taken, should be denied. Pre-trial procedure for a simplification of the issues was suggested.

RULE 19—Necessary Joinder of Parties—Subdivision (b)—Effect of Failure to Join

Paul M. Mahoney v. Bethlehem Engineering Corporation. (Southern District of New York, LEIBELL, D. J., Apr. 19, 1939).

1. Majority stockholders, who make a contract for the benefit of the corporation, are not indispensable parties, although they may be necessary parties, to an action by a trustee in bankruptcy of the corporation, for breach of such contract. Hence, failure to join them is not ground for dismissal.

2. Suit was brought by beneficiary of contract. There was a dispute as to whether contract was to be performed in Massachusetts or in New York, since the Massachusetts law did not permit a third party to sue on a contract made for his benefit, while the New York law did. *Held,* defendant's motion for bill of particulars stating places where contract was made and was to be performed, should be granted. (Rule 12(e)).

RULE 20—Permissive Joinder of Parties—Subdivision (a)—Permissive Joinder

James A. Whatley v. Missouri Pacific Railroad Co., et al. v. The Travelers Insurance Co., Intervener. (Western District of Louisiana, Monroe Division, DAWKINS, D. J., Apr. 11, 1939).

In an action to recover for personal injuries sustained while unloading a freight car, plaintiff may join as parties defendant the resident delivering carrier and the non-resident initial carrier, if both of them were responsible for the accident. Hence, a motion to remand to the state court after the latter had removed the case on the grounds of a separable controversy as to it, should be granted.

RULE 26—Depositions Pending Action—Subdivision (a)—When Depositions May Be Taken

George Barrezueta v. Sword Steamship Line, Inc. (Southern District of New York, HULBERT, D. J., Apr. 5, 1939).

1. After answer is served the deposition of a party may be taken merely on notice.

2. A motion which is so involved and indefinitely phrased as to be confusing constitutes failure to proceed in accordance with the Rules and should be denied without prejudice. (Rule 7(b)).

3. A party proceeding to take depositions may not move to limit the scope of the examination. (Rule 30 (b)).

John F. Brinley v. Alvin B. Lewis. (Middle District of Pennsylvania, WATSON, D. J., May 1, 1939).

Motion for more definite statement or for a bill of particulars should be denied and defendant should proceed by discovery if the complaint is not vague or ambiguous and the information is not needed to enable defendant to plead.

Subdivision (e)—Objections to Admissibility

The Union Central Life Insurance Company v. Phoebe Burger, et al. (Southern District of New York, LEIBELL, D. J., Apr. 4, 1939).

The better practice in respect to objections to the admissibility of evidence sought on examination before trial is to raise them during the examination or when the deposition is used at the trial.

RULE 30—Depositions Upon Oral Examination—Subdivision (b)—Orders for the Protection of Parties and Deponents

The Union Central Life Insurance Company v. Phoebe Burger, et al. (Southern District of New York, LEIBELL, D. J., Apr. 4, 1939).

1. A motion to vacate a notice to take a deposition, on the ground that the evidence sought would not be admissible, will not be granted unless it clearly appears that the evidence is privileged or irrelevant.

2. The better practice in respect to objections to the admissibility of evidence sought on examination before trial is to raise them during the examination or when the deposition is used at the trial. (Rules 30 (d) and 26 (e)).

3. Objection to an examination before trial on the ground that the person sought to be examined is an infant sixteen years of age, cannot be sustained.

4. Examinations before trial should conform to rules of evidence. (Rule 43 (a)).

George Barrezueta v. Sword Steamship Line, Inc. (Southern District of New York, HULBERT, D. J., Apr. 5, 1939).

A party proceeding to take depositions may not move to limit the scope of the examination.

Elizabeth V. Clair v. Philadelphia Storage Battery Company. (Eastern District of Pennsylvania, DICKINSON, D. J., Apr. 19, 1939).

1. The oral deposition of a witness residing at a distance should be taken at the place of trial if the witness consents and the adverse party so requests.

2. The new Rules should govern the taking of depositions after their effective date although the action was commenced prior to such date. (Rule 86)

Arden L. Norton, et al. v. Cooper Jarrett Inc., et al. (Northern District of New York, COOPER, D. J., Apr. 26, 1939).

1. The "contention" of a party is made by pleadings and is not a proper subject of examination by deposition. It may, however, be obtained by a motion for a bill of particulars. (Rule 12 (e))

2. The taking of depositions by a party who is guilty of laches should be conditioned on its causing no delay in the trial.

Subdivision (d)—Motion to Terminate or Limit Examination

The Union Central Life Insurance Company v. Phoebe Burger, et al. (Southern District of New York, LEIBELL, D. J., Apr. 4, 1939).

The better practice in respect to objections to the admissibility of evidence sought on examination before trial is to raise them during the examination or when the deposition is used at the trial.

The Cumberland Corporation v. McLellan Stores Company, et al. (Southern District of New York, HULBERT, D. J., Apr. 13, 1939).

A motion for the production of voluminous documents and for taking of lengthy depositions, made four years after institution of suit, during which time an action involving substantially the same issues was commenced in another court in which depositions were taken, should be denied. Pre-trial procedure for a simplification of the issues was suggested. (Rule 16)

Nelson E. Newcomb v. The Universal Match Corporation. (Eastern District of New York, MOSCOWITZ, D. J., May 8, 1939).

1. Motion to terminate the taking of the deposition of a party or in the alternative to limit such examination to written interrogatories concerning certain specified matters should be denied if the party seeking the examination is entitled to a general examination of his adversary, and if the examination had proceeded for only a short time.

2. If a refusal to answer questions or produce documents at an examination before trial is not willful but was based on advice of counsel, the witness should be directed to answer, and a motion to punish him for contempt should be denied. (Rule 37 (b) (1))

RULE 33—Interrogatories to Parties

Arthur W. Caggiano v. Socony Vacuum Oil Company, Inc. (District of Massachusetts, MCLELLAN, D. J., Apr. 10, 1939).

1. In an action for alleged wrongful termination of a lease of an oil station, objections should be sustained to plaintiff's interrogatories asking whether defendant contended that plaintiff was in default, whether defendant considered plaintiff an "Independent Dealer" and at what price defendant charged plaintiff for gasoline and oil.

2. Interrogatories requiring a party to state his contentions or legal conclusions are improper.

Mrs. Mary Helen Dixon, et al. v. Sunshine Bus Lines, Inc. (Western District of Louisiana, Monroe Division, PORTERIE, D. J., Apr. 11, 1939).

The use of interrogatories to parties is not limited to a development of ultimate facts but may extend to discovery of merely evidentiary details.

Martin Sierocinski v. E. I. DuPont DeNemours & Co. (Circuit Court of Appeals for the Third Circuit, BIDDLE, C. J., Apr. 24, 1939).

In action against the manufacturer of dynamite caps to recover for personal injuries resulting from the explosion of one of the caps during the process of crimping it, plaintiff alleged the negligent manufacture and distribution of the cap in such fashion as to make it explode when crimped. The Circuit Court of Appeals in reversing order dismissing complaint for failure to set forth any specific act of negligence, held that plaintiff need not plead evidence, that "a short and plain statement of the claim showing that the pleader is entitled to relief" is sufficient as a pleading and that further information if needed to prepare a defense, can be obtained by interrogatories.

Blanche L. Whitkop v. Evelyn P. Baldwin, alias. (District of Massachusetts, MCLELLAN, D. J., May 1, 1939).

In an action for slander, interrogatories seeking names and addresses of plaintiff's employers before and after the alleged slander and dates when former employers ceased to employ plaintiff should be answered.

RULE 34—Discovery and Production of Documents and Things for Inspection, Copying, or Photographing

John D. Flynn v. Lucy Cotton Thomas Magraw, et al. (Southern District of New York, HULBERT, D. J., Apr. 17, 1939).

Plaintiff's motion for the production of records of defendant corporation by one of its officers should be

denied if it appears that such officer does not have the custody of the records requested.

George P. Calanos v. The United States of America. (District of Massachusetts, McLELLAN, D. J., Apr. 24, 1939).

1. Production of Government hospital records relating to plaintiff in an action on a war risk insurance contract may be directed and plaintiff may be granted permission to copy them but not to remove them for photographing.

2. In a war risk insurance action, Government should not be directed to produce work records of plaintiff while in employ of third parties since the Government is no more in control of such records than is plaintiff.

3. Plaintiff in a war risk insurance action is entitled to an order directing the defendant to produce records of Government physicians but not those of any other physicians who may have treated plaintiff.

William S. Schoenberg v. Decorative Cabinet Corporation, et al. (Eastern District of New York, MOSCOWITZ, D. J., May 1, 1939).

Defendant's motion for permission to inspect and photograph a model should be denied, with leave to renew, in the absence of showing of the existence of the model.

RULE 35—Physical and Mental Examination of Persons—Subdivision (a)—Order for Examination

Saverio Gitto, et al. v. "Italia," Societa' Anonima Di Navigazione, Genova. (Eastern District of New York, MOSCOWITZ, D. J., Apr. 25, 1939).

As selection of the physician to conduct a physical examination of a party rests within the sound discretion of the court, objections by party who is to be examined to the appointment of his adversary's choice should be sustained.

RULE 36—Admission of Facts and of Genuineness of Documents—Subdivision (a)—Request for Admission

Booth Fisheries Corporation v. General Foods Corporation, et al. (District of Delaware, NIELDS, D. J., Mar. 21, 1939).

A party should not be required to admit or deny facts which are not within his knowledge but which are provable by testimony of third parties.

RULE 37— Refusal to Make Discovery: Consequencies—Subdivision (b)—Failure to Comply with Order—Paragraph (1)—Contempt

Nelson E. Newcomb v. The Universal Match Corporation. (Eastern District of New York, MOSCOWITZ, D. J., May 8, 1939).

If a refusal to answer questions or produce documents at an examination before trial is not willful but was based on advice of counsel, the witness should be directed to answer, and a motion to punish him for contempt should be denied.

RULE 38—Jury Trial of Right—Subdivision (b)—Demand

Isberg v. Schulz. (Western District of Washington, Apr. 10, 1939).

In an action for personal injury, plaintiff demanded trial by jury within two days after denial of defendant's motion to remand although about six months after filing of the answer. Defendant's motion to strike the demand for jury trial was denied by Judge Cushman.

RULE 41—Dismissal of Actions—Subdivision (a)—Voluntary Dismissal: Effect Thereof

The Cleveland Trust Company v. Osher & Reiss, Inc. (Eastern District of New York, CAMPBELL, D. J., Apr. 17, 1939).

1. Defendant's motion to dismiss under Rule 41 on the ground that there have been two previous voluntary dismissals of the same claim should be denied if both of them were had before the effective date of the new Rules. (Rule 86).

2. The filing of notice of a second voluntary dismissal of a claim operates as an adjudication upon the merits although the previous dismissal was secured before the effective date of the new Rules, provided the second dismissal is after such date. (Rule 86).

E. E. Gregory, et al. v. Royal Typewriter Company, Inc., et al. (Southern District of New York, HULBERT, D. J., Apr. 20, 1939).

In an action for patent infringement, plaintiff's motion to strike a counterclaim for declaratory judgment, which alleged non-infringement and invalidity, should be denied since, without such counterclaim, plaintiff could dismiss his action and thus leave undetermined the issue of validity. (Rule 12 (f))

Charles H. Leach v. Ross Heater & Manufacturing Company, Inc. (Circuit Court of Appeals for the Second Circuit, PATTERSON, C. J., Apr. 24, 1939).

Defendant in a patent suit counterclaimed for declaratory judgment. Plaintiff moved to dismiss both the complaint and counterclaim. Motion was made and heard before the effective date of the new Rules. The motion was granted after such date, the court holding that the Equity Rules should apply. *Held,* on appeal that while the old Rules were applicable, the plaintiff was not entitled to dismiss thereunder after defendant had interposed a valid counterclaim. Concurring opinion held new Rules should have been applied and that the motion to dismiss should have been denied thereunder.

Subdivision (b)—Involuntary Dismissal: Effect Thereof

H. A. Wisdom v. The Texas Company, a Corporation. (Northern District of Alabama, Southern Division, MURPHREE, D. J., Apr. 13, 1939).

Plaintiff's failure to appear at a pre-trial conference ordered by the court, advance notice of which was given to the attorneys for both parties, constitutes a failure to prosecute and failure to comply with the Rules, and defendant's motion to dismiss the action on the merits should be granted.

RULE 43—Evidence—Subdivision (a)—Form and Admissibility

The Union Central Life Insurance Company v. Phoebe Burger, et al. (Southern District of New York, LEIBELL, D. J., Apr. 4, 1939).

Examinations before trial should conform to rules of evidence.

RULE 50—Motion for a Directed Verdict—Subdivision (b)—Reservation of Decision on Motion

Clara G. Baten, et al. v. Kirby Lumber Corporation. (Circuit Court of Appeals for the Fifth Circuit, SIBLEY, C. J., Apr. 19, 1939).

Rule 50 does not abolish but emphasizes the necessity of a motion for a directed verdict to raise the legal question as to the sufficiency of the evidence.

RULE 52—Findings by the Court—Subdivision (a)—Effect

Guilford Const. Co., et al. v. Biggs. (Circuit Court of Appeals for the Fourth Circuit, PARKER, C. J., Feb. 28, 1939).

The provision of Rule 52 (a) that the findings of fact by the trial court should be accepted on appeal unless clearly erroneous, is but the formulation of a rule long recognized and applied by courts of equity.

Edward T. Malloy, et al. v. New York Life Insurance Company. (Circuit Court of Appeals for the First Circuit, FORD, D. J., Apr. 11, 1939).

Findings of fact by the court should not be disturbed on appeal when the evidence is conflicting and the credibility of witnesses is involved, unless it appears that the trial judge was clearly wrong.

RULE 53—Masters—Subdivision (b)—Reference

Lewis C. Coyner, et al. v. The United States of America. (Circuit Court of Appeals for the Seventh Circuit, KERNER, C. J., Apr. 11, 1939).

Appellate court affirmed reference to an auditor in an action on a veteran's insurance policy holding that the ruling was within the discretion of the trial court, but observed that "it is far better practice, except where stress of work or other good cause is shown, for the court to try cases where the determination of the issues is dependent upon the credibility of the witnesses," citing Rule 53.

Subdivision (e)—Report—Paragraph (2)—In Non-Jury Actions

In the matter of Jess E. Blakesley, Bankrupt. (Western District of Missouri, REEVES, D. J., May 2, 1939).

A motion to strike out a report of a special master should be considered as "written objections" to the report.

RULE 56—Summary Judgment—Subdivision (a)—For Claimant

Albert B. Levinson v. Molly Cohen. (Southern District of New York, COXE, D. J., Mar. 7, 1939).

In an action by a trustee in bankruptcy to recover certain preferential payments, a previous determination in the bankruptcy proceedings that such payments were preferential is *res judicata* and a motion by plaintiff for summary judgment should be granted.

Phoenix Hardware Company v. Paragon Paint & Hardware Corporation. (Eastern District of New York, CAMPBELL, D. J., Apr. 18, 1939).

1. Plaintiff is not entitled to summary judgment or to judgment on the pleadings, if a material issue of fact is raised by the answer. (Rule 12 (c)).

2. A defense of *res judicata* is insufficient and does not warrant summary judgment for the defendant or to judgment on the pleadings if the claim is based on facts transpiring subsequently to the prior judgment. (Rules 12 (c) and 56 (b)).

3. Plaintiff's motion to strike defenses which were held insufficient at a former trial should be granted. (Rule 12 (f)).

Subdivision (b)—For Defending Party

Phoenix Hardware Company v. Paragon Paint & Hardware Corporation. (Eastern District of New York, CAMPBELL, D. J., Apr. 18, 1939).

A defense of *res judicata* is insufficient and does not warrant summary judgment for the defendant or to judgment on the pleadings if the claim is based on facts transpiring subsequently to the prior judgment.

Subdivision (c)—Motion and Proceedings Thereon

Leon Ottinger v. General Motors Corporation. (Southern District of New York, LEIBELL, D. J., Apr. 5, 1939).

In an action for balance due on a contract, defendant's assertion of an implied waiver raises an issue as to a material fact which should not be disposed of on motion for summary judgment.

RULE 59—New Trials—Subdivision (a)—Grounds

United States of America v. Mauro Colangelo, United States of America v. Domenico Parisi. (Eastern District of New York, CAMPBELL, D. J., Apr. 27, 1939).

Before entry of judgment in an action tried without a jury, the court may, on motion for new trial on ground of newly discovered evidence, allow the opening of the case for reception of such evidence.

RULE 73—Appeal to a Circuit Court of Appeals—Subdivision (a)—How Taken

William McCrone v. United States of America. (Supreme Court of the United States, BLACK, J., Apr. 17, 1939).

An appeal in a contempt proceeding was taken prior to September 16, 1938, by filing a notice of appeal on the assumption that the proceeding was criminal. Time to appeal expired prior to September 16, 1938. The Supreme Court on certiorari ruled the proceeding was civil. *Held,* notice of appeal was ineffective and appeal had been properly dismissed by the Circuit Court of Appeals. (Rule 86).

[Editorial Note: See decision of Circuit Court of Appeals dismissing the appeal in this case in 10 Bull. 13 (Rule 86) 100 F. (2d) 322.]

George Ainsworth v. Gill Glass & Fixture Company. (Circuit Court of Appeals for the Third Circuit, MARIS, C. J., May 5, 1939).

1. After notice of appeal has been timely filed, the circuit court of appeals may permit the record on appeal to be filed at any time.

2. An order of the district court extending the time to file the record on appeal, which is entered after expiration of time prescribed by the Rules, is invalid if it does not set forth that it was made upon motion after notice and that failure to file such record within the 40-day period was the result of excusable neglect. (Rule 6 (b))

RULE 75—Record on Appeal to a Circuit Court of Appeals—Subdivision (c)—Form of Testimony

Clara G. Baten, et al. v. Kirby Lumber Corporation. (Circuit Court of Appeals for the Fifth Circuit, SIBLEY, C. J., Apr. 19, 1939).

1. On appeal from a judgment in an action tried before the effective date of the new Rules, a complete typewritten transcript of the evidence was filed in the Circuit Court of Appeals. *Held,* motion to dismiss appeal for failure to print should be denied, as appellant had not moved for a directed verdict and therefore no question as to the sufficiency of the evidence had been properly raised. (Rules 75 (1) and 86)

2. Rule 50 does not abolish but emphasizes the necessity of a motion for a directed verdict to raise the legal question as to the sufficiency of the evidence. (Rule 50 (b))

Subdivision (1)—Printing

Clara G. Baten, et al. v. Kirby Lumber Corporation. (Circuit Court of Appeals for the Fifth Circuit, SIBLEY, C. J., Apr. 19, 1939).

On appeal from a judgment in an action tried before the effective date of the new Rules, a complete typewritten transcript of the evidence was filed in the Circuit Court of Appeals. *Held,* motion to dismiss appeal for failure to print should be denied, as appellant had not moved for a directed verdict and therefore no question as to the sufficiency of the evidence had been properly raised.

RULE—84—Forms

Connecticut General Life Insurance Company v. Morris Cohen. (Eastern District of New York, MOSCOWITZ, D. J., Apr. 27, 1939).

The jurisdictional amount is sufficiently alleged if Form 2 in the Appendix of Forms is followed.

RULE 86—Effective Date

Charles E. Kraus v. General Motors Corporation, et al. (Southern District of New York, CONGER, D. J., Mar. 2, 1939).

The new Rules were applied by the court to a complaint served over a year prior to their effective date, on a motion to dismiss coming on for hearing after such date.

United States of America v. Ezekiel C. Smith, (Eastern District of Pennsylvania, DICKINSON, D. J. Apr. 12, 1939).

A demurrer coming on for hearing subsequently to the effective date of the new Rules may be treated as a motion to dismiss.

William McCrone v. United States of America. (Supreme Court of the United States, BLACK, J., Apr. 17, 1939).

An appeal in a contempt proceeding was taken prior to September 16, 1938, by filing a notice of appeal on the assumption that the proceeding was criminal. Time to appeal expired prior to September 16, 1938. The Supreme Court on certiorari ruled the proceeding was civil. *Held,* notice of appeal was ineffective and appeal had been properly dismissed by the Circuit Court of Appeals.

The Cleveland Trust Company v. Osher & Reiss, Inc. (Eastern District of New York, CAMPBELL, D. J., Apr. 17, 1939).

1. Defendant's motion to dismiss under Rule 41 on the ground that there have been two previous voluntary dismissals of the same claim should be denied if both of them were had before the effective date of the new Rules.

2. The filing of notice of a second voluntary dismissal of a claim operates as an adjudication upon the merits although the previous dismissal was secured before the effective date of the new Rules, provided the second dismissal is after such date.

Clara G. Baten, et al. v. Kirby Lumber Corporation. (Circuit Court of Appeals for the Fifth Circuit, SIBLEY, C. J., Apr. 19, 1939).

On appeal from a judgment in an action tried before the effective date of the new Rules, a complete typewritten transcript of the evidence was filed in the Circuit Court of Appeals. *Held,* motion to dismiss appeal for failure to print should be denied, as appellant had not moved for a directed verdict and therefore no question as to the sufficiency of the evidence had been properly raised.

Elizabeth V. Clair v. Philadelphia Storage Battery Company. (Eastern District of Pennsylvania, DICKINSON, D. J., Apr. 19, 1939).

The new Rules should govern the taking of depositions after their effective date although the action was commenced prior to such date.

Charles H. Leach v. Ross Heater & Manufacturing Company, Inc. (Circuit Court of Appeals for the Second Circuit, PATTERSON, C. J., Apr. 24, 1939).

Defendant in a patent suit counterclaimed for declaratory judgment. Plaintiff moved to dismiss both the complaint and counterclaim. Motion was made and heard before the effective date of the new Rules. The motion was granted after such date, the court holding that the Equity Rules should apply. *Held,* on appeal that while the old Rules were applicable, the plaintiff was not entitled to dismiss thereunder after defendant had interposed a valid counterclaim. Concurring opinion held new Rules should have been applied and that the motion to dismiss should have been denied thereunder. (Rule 41 (a))

Integration Comes to Texas

(From Texas Bar Journal—May)

"The fight for integration of the Bar of Texas, waged for sixteen years by a few interested lawyers, was brought to a successful close April 19 when Governor W. Lee O'Daniel affixed his signature to the State Bar Act. Introduced in the present session in the form of two brief paragraphs, the bill grew by numerous amendments until it was given the overwhelming approval of the House of Representatives February 22 and the Senate April 5. Having received the necessary two-thirds vote, it went into effect immediately.

"The Act requires, in brief, that all lawyers in the state register with the Supreme Court and pay an annual fee not to exceed $4. That court is given the authority to promulgate rules and regulations for disciplining, suspending, and disbarring attorneys at law, and to prescribe a code of ethics governing their conduct. Each proposed rule must be submitted by mail to every lawyer in the state for a vote before it can be adopted. The right of trial by jury in the defendant's county of residence is reserved in disbarment cases."

PROPOSED AMENDMENTS TO THE CONSTITUTION AND BY-LAWS OF THE AMERICAN BAR ASSOCIATION TO BE PRESENTED AND ACTED UPON AT ITS SIXTY-SECOND ANNUAL MEETING AT SAN FRANCISCO, CAL., JULY 10-14, 1939

TO THE MEMBERS OF THE AMERICAN BAR ASSOCIATION:

I

NOTICE IS HEREBY GIVEN that Guy Richards Crump, George M. Morris, Sylvester C. Smith, Jr., Philip J. Wickser and Chauncey E. Wheeler, members of the Association, and members of the Rules and Calendar Committee of the House of Delegates, have filed with the Secretary of the Association the following proposed amendments to the Constitution of the Association and the Rules of Procedure of the House of Delegates:

AMENDMENTS TO THE CONSTITUTION

1. Amend Article II by inserting in line 3 thereof, immediately after the comma which follows the word "group," the following:

"or of any federal, state or territorial court of record,"

with the result that the Article shall read,

"Any person who is a member in good standing of the Bar of any State or Territory of the United States, or of any of the territorial group, or of any federal, state or territorial court of record, shall be eligible to membership in this Association, on endorsement, nomination and election as provided in the By-Laws of the Association. The term "State" wherever used in this Constitution and By-Laws shall include each the District of Columbia, the Territory of Hawaii, and the Territory of Puerto Rico."

2. Amend Article IV, Section 3, by striking out the whole of said section, lines 1-13, and inserting in lieu thereof the following:

"Section 3. Assembly Delegates.—At each annual meeting the Assembly shall elect four members of the House of Delegates, not more than one of whom shall be a resident of any one state. Election shall be by a plurality vote of the Assembly for a term which shall commence at the adjournment of the annual meeting at which such delegates are elected, and shall expire at the adjournment of the second annual meeting following their election. If an Assembly delegate shall fail to register in attendance by twelve o'clock noon on the opening day of an annual meeting, the office of such delegate shall be deemed to be vacant; and thereupon the Assembly shall elect a successor to serve for the remainder of the term.

"At the annual meeting in 1939, four additional Assembly delegates, not more than one of whom shall be a resident of any one state, shall be elected for a term expiring at the adjournment of the annual meeting in 1940."

3. Amend Article V, Section 3, by striking out the word "Five" in line 9 thereof and inserting in lieu thereof the word "Eight," with the result that said line 9 shall read "Eight Delegates chosen by the Assembly;".

4. Amend Article V, Section 6, by changing, in line 24 thereof, the period immediately after the word "certified" to a semicolon and inserting thereafter the following:

"provided, however, that the terms of all State and local bar association delegates which would otherwise continue after the adjournment of the annual meeting of this Association in 1940, shall end at the adjournment of said meeting. Thereafter the terms of such delegates shall end at the adjournment of the annual meeting in even-numbered years. In the event of the resignation, disqualification or death of any such delegate, the association which he represents may select and certify a successor to serve for the balance of his unexpired term."

5. Amend Article V, Section 7, by adding the following at the end of line 13:

"The term of any such delegate shall begin with the adjournment of the annual meeting following his selection, and shall end with the adjournment of the next annual meeting thereafter. In the event of the resignation, disqualification or death of any such delegate, the organization which he represents may select and certify a successor to serve for the balance of the delegate's unexpired term."

6. Amend Article VIII, Section 2, by striking out, in lines 1 to 8 thereof, the sentence reading:

"Not earlier than seventy days nor later than forty days before the opening of the annual meeting, two hundred members of the Association in good standing, of whom not more than one hundred may be accredited to any one State, may file with the Secretary a nominating petition (which may be in parts) duly signed, making other nominations for any office to be filled at the next annual meeting."

and inserting in lieu thereof, the following:

"Not earlier than seventy days nor later than forty days before the opening of the annual meeting, one hundred members of the Association in good standing of whom not more than fifty may be accredited to any one State, may file with the Secretary a nominating petition (which may be in parts) duly signed, making other nominations for the offices of President, Chairman of the House of Delegates, Secretary or Treasurer. Not earlier than seventy days nor later than forty days before the opening of the annual meeting, fifty members of the Association in good standing of whom not more than twenty-five may be accredited to one State, may file with the Secretary a nominating petition (which may be in parts) duly signed, making other nominations for any member of the Board of Governors to be elected in that year."

7. Amend Article VIII, Section 3, (a) by striking out, in lines 2 to 5 thereof, the first sentence reading:

"A member of the Board of Governors shall be chosen from each federal judicial circuit, and at the time of his nomination he shall be a member of the House of Delegates and a resident of the circuit for which he is chosen."

and inserting in lieu thereof the following:

"A member of the Board of Governors shall be chosen from each federal judicial circuit. At the time of his nomination he shall be a resident of the circuit for which he is chosen, and shall be, or shall have been, a member of the House of Delegates."

and (b) by striking out in lines 10 to 14 of the said section, the following:

"The members of the Executive Committee, whose terms do not expire in 1936, shall be members of the Board of Governors until the expiration of the respective terms for which they were elected as members of the Executive Committee."

RULES OF PROCEDURE OF THE HOUSE OF DELEGATES

1. Amend Rule III, paragraph 4, by striking out, after the words "the American Bar Association;" in line 9, all of the remaining paragraph, and inserting in lieu thereof the following:

"and each such affiliated organization, if admitted to the House, shall file a certified list of the names and addresses of its members in good standing whenever requested by the Committee on Credentials and Admissions."

2. Amend Rule III, paragraph 5, by striking out in lines 7 and 8 thereof, the clause reading:

"and such a list of members shall be filed annually by each such Association,"

and inserting in lieu thereof the following:

"and such a list of members shall be filed whenever requested by the Committee on Credentials and Admissions."

II

NOTICE IS HEREBY GIVEN that Guy Richards Crump, George M. Morris, Sylvester C. Smith, Jr., Philip J. Wickser and Chauncey E. Wheeler, members of the Association and members of the Rules and Calendar Committee of the House of Delegates, have filed with the Secretary of the Association the following proposed amendments to the By-Laws of the Association. These amendments have been prepared at the request of the Board of Governors in order that prompt effect may be given to the recommendations (in the event of their adoption by the Assembly and the House) of the report of the special Committee on Survey of Sections and Committees. These amendments are proposed by the Rules and Calendar Committee without recommendation.

(Amendments to By-Laws re Committee on Aeronautical Law)

1. Amend Article X, Section 1, line 10, by striking out this line reading:

"On Aeronautical Law;".

2. Amend Article X, Section 5, lines 1-4, by striking out these lines reading:

"Section 5. Committee on Aeronautical Law.—The Committee on Aeronautical Law shall have power to consider and report on all questions pertaining to the law of aeronautics."

(Amendments to By-Laws re Committee on American Citizenship)

3. Amend Article X, Section 1, lines 11-12, by striking out these lines reading:

"On American Citizenship, to consist of ten members; one from each federal judicial circuit;".

4. Amend Article X, Section 1, line 41, by striking out "American Citizenship," in that line.

5. Amend Article X, Section 6, lines 1-6, by striking out these lines reading:

"Section 6. Committee on American Citizenship.—The Committee on American Citizenship shall consist of one member from each federal judicial circuit, and it shall be its duty to inspire in the people of the United States a proper appreciation of the privileges as well as the duties of American citizens."

(Amendments to By-Laws re Committee on Commerce)

6. Amend Article X, Section 1, line 13, by striking out this line reading "On Commerce;".

7. Amend Article X, Section 1, line 41, by striking out "Commerce," in that line.

8. Amend Article X, Section 7, lines 1-9, by striking out these lines reading:

"Section 7. Committee on Commerce.—The Committee on Commerce shall study the existing status of federal and state laws and proposed amendments thereto pertaining to or affecting interstate or foreign commerce, recommend to the Association as occasion may require such action by the Association as may be deemed proper, and consider and report on such other matters as in the judgment of the Committee are reasonably pertinent to the subject of foreign and interstate commerce and the laws relating thereto."

(Amendments to By-Laws re Committee on Commercial Law and Bankruptcy)

9. Amend Article X, Section 1, line 14, by striking out this line reading: "On Commercial Law and Bankruptcy;".

10. Amend Article X, Section 8, lines 1-6, by striking out these lines reading:

"Section 8. Committee on Commercial Law and Bankruptcy.—The Committee on Commercial Law and Bankruptcy shall have power to consider and report on all matters having to do with commercial law and bankruptcy and the practice and administration thereof, other than matters within the field of interstate or foreign commerce."

(Amendments to By-Laws re Committee on Federal Taxation)

11. Amend Article X, Section 1, line 16, by striking out this line reading:

"On Federal Taxation, to consist of seven members;".

12. Amend Article X, Section 1, line 41, by striking out "Federal Taxation," in that line.

13. Amend Article X, Section 10, lines 1-9, by striking out these lines reading:

"Section 10. Committee on Federal Taxation.—The Committee on Federal Taxation shall study existing and proposed internal revenue statutes and the relation of the same to State laws and revenues; shall study the regulations issued under Federal tax laws and the principles, policies and processes related thereto; shall consult with the authorities who act in tax matters, and shall recommend in the Committee's reports such amendments of the laws, regulations, policies and processes as the Committee may deem advisable."

(Amendments to By-Laws re Committee on Noteworthy Changes in Statute Law)

14. Amend Article X, Section 1, line 21, by striking out this line reading:

"On Noteworthy Changes in Statute Law;".

15. Amend Article X, Section 14, lines 1-5, by striking out these lines reading:

"Section 14. Committee on Noteworthy Changes in Statute Law.—The Committee on Noteworthy Changes in Statute Law shall report annually to the Association the noteworthy changes in the law resulting from statutes passed by the Congress and by State legislatures."

(General)

16. Amend section and line enumerations as may be an appropriate result of the adoption of any, or all, of the foregoing proposed amendments.

III

Notice is also hereby given that Mr. Frank J. Hogan, of Washington, District of Columbia, a member of the Association, has filed with the Secretary of the Association the following proposed amendment to the By-Laws of the Association:

Amend Article X, Section 1, of the By-Laws by striking out the last paragraph thereof, which reads as follows:

"The President shall appoint annually for each state and the territorial group a Membership Committee whose duty it shall be to encourage desirable applications for membership. The respective Membership Committees shall be under the supervision of a General Chairman appointed by the President."

IV

Notice is hereby given that Harry P. Lawther, of Dallas, Texas, a member of the Association, has filed with the Secretary of the Association the following proposed amendments to the Constitution of the Association:

1. Amend Article VII of the Constitution so that the same shall hereafter read as follows:

ARTICLE VII. OFFICERS OF THE ASSOCIATION

The following officers shall be elected at each annual meeting of the House of Delegates:

(1) A President who shall not thereafter be eligible for election to that office;

(2) A Chairman of the House of Delegates chosen from the membership of the House of Delegates and to be nominated at the annual meeting of the House of Delegates at which such Chairman is to be elected;

(3) A Treasurer;

(4) A Secretary.

In voting for said officers and for members of the Board of Governors, the vote shall be by States; each State shall have one vote. In case of a division among the delegates from any State, the vote of that State shall be divided in proportion to the number favoring one or the other candidate and as thus divided the vote of that State shall be cast.

If any office shall become vacant said office, if the House of Delegates be not in session, shall be filled by the Board of Governors for the remainder of the term. The Board of Governors may elect and may prescribe the duties of one or more assistant secretaries and an executive secretary and shall fix their salaries, each of whom shall hold office at the pleasure of the Board of Governors. The Executive Secretary and other employees need not be members of the Association.

2. Amend Section 11 of Article V of the Constitution so that the same shall hereafter read as follows:

SECTION 11. VOTING IN THE HOUSE OF DELEGATES

Except in voting for officers of the Association and for members of the Board of Governors, each member of the House of Delegates in whatever capacity shall have one vote; no member shall have more than one vote by virtue of any dual capacity. The Secretary of the Association shall act as Secretary of the House of Delegates, shall keep a roster of its members entitled to vote, and shall keep and be the custodian of its minutes. The Chairman of each standing and special Committee shall have the privilege of the floor in the House of Delegates, but shall have no right to vote as such Chairman. (This amendment offered only in the event the amendment to Art. VII is adopted.)

3. Amend Article VIII of the Constitution so that the same shall hereafter read as follows:

SECTION 1. NOMINATIONS BY STATE DELEGATES

The State Delegates from each State (and the Delegate from the Territorial Group) shall meet not later than seventy days before the opening of the annual meeting in each year and shall make and promptly announce and publish a nomination for each of the officers of President, Secretary and Treasurer and for the members of the Board of Governors to be elected in that year. The time and place of the meeting of the State Delegates shall be fixed by the Board of Governors. Not less than twenty days written notice of such meeting shall be sent by the Chairman of the House of Delegates to each State Delegate. The Chairman shall act as the presiding officer of all meetings of State Delegates and the Secretary of the Association shall act as Secretary of such meetings. A majority of the State Delegates present and voting at such meeting shall be entitled to make any nominations. The traveling and other necessary expenses incurred in the Continental United States by State Delegates in attendance at the meeting provided for in this Section shall be paid by the Association. In the event of the death, disability or declination of a member nominated by the State Delegates, the State Delegates shall reconvene at the annual meeting and make a nomination for that office.

SECTION 2. OTHER NOMINATIONS

Not earlier than seventy days nor later than forty days before the opening of the annual meeting two hundred members of the Association in good standing of whom not more than one hundred may be accredited to any one State may file with the Secretary a nominating petition (which may be in parts) duly signed making other nominations for any office to be filled at the next annual meeting. With any such petition shall be filed the consent of the nominee. Other nominations for any office to be filled at the annual meeting may be made from the floor of the House at the annual meeting of the House of Delegates at which said officers are to be elected. The Secretary shall cause all nominations in whatever manner made prior to the annual meeting to be published in the next issue of the AMERICAN BAR ASSOCIATION JOURNAL and shall certify such nominations to the House of Delegates.

SECTION 3. CHOICE OF BOARD OF GOVERNORS BY CIRCUITS

A member of the Board of Governors shall be chosen from each federal judicial circuit and at the time of his nomination he shall be a resident of the circuit for which he is chosen. He shall be elected for a term beginning with the adjournment of the annual meeting at which he is elected and ending with the adjournment of the third annual meeting next following his election. The District of Columbia shall be considered as a part of the fourth circuit. The members of the Executive Committee whose terms do not expire in 1936 shall be members of the Board of Governors until the expiration of the respective terms for which they were elected as members of the Executive Committee. In 1936 a member of the Board of Governors shall be elected from each the first, second, sixth and tenth circuits; in 1937, from the third, fifth and ninth circuits; in 1938, from the fourth, seventh and eighth circuits. After the year 1936 all elections upon nominations made as hereinbefore provided shall be by the House of Delegates on the first day of the annual meeting."

HARRY S. KNIGHT, SECRETARY

(*Continued on page* 534)

LEGAL ETHICS AND PROFESSIONAL CONDUCT

Disbarment Follows Two Suspensions

MEMBERS of the bar who have given thoughtful consideration to the matter, occasionally argue that disbarment rather than suspension should be the judgment when a lawyer is shown to have been guilty of professional misconduct involving moral turpitude. In view of the fact that it must be conceded that in the nature of things it is not possible firmly to establish good moral character when a young person is admitted to practice, a realistic view would require a frank recognition that, when professional misconduct involving moral turpitude occurs, the character of the attorney is revealing itself as contrary to what it was assumed to be when he was admitted. If the misconduct was such as would have prevented admission, it should be followed by disbarment because the character of the lawyer that is evidenced by such misconduct is not likely to change. Fear may deter him from a repitition of the particular kind of misconduct for which he was suspended, but other misconduct generally follows.

This occurred in In re Gavrin, 10 N. Y. S. (2d) 456, a case in which the respondent appropriated to his own use money that he had collected for European heirs of an estate. He had been suspended in 1934, for a year, for filing a false answer in litigation in which he was a defendant for the purpose of delaying collection of a note given for money borrowed from a client and again in 1936, for six months, for failure fully to advise a client of the true situation as to a mortgage investment he had made in her behalf.

The 1934 misconduct foretold that which followed.

Attorney Disbarred for Aiding Unauthorized Practice of Law

In 1937, the American Bar Association added Canon 47 to the Canons of Professional Ethics, which reads as follows:

"No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

In a recent case in New York an attorney was disbarred whose conduct violated the foregoing Canon. In re Tuthill, 10 N. Y. S. (2d) 643.

It appeared that a New York corporation had been organized in 1924 by an attorney, admitted and suspended from practice in Oregon and denied admission in New York. The objects of the corporation were stated to be "to represent through power of attorney, or otherwise, individuals or estates, co-partnerships, corporations, heirs, legatees, distributees and devisees in the cashing, collection or disposal of the claims, rights or money due in this country, or foreign countries, and to exercise any and all other powers which a corporation, co-partnership or natural persons could do or exercise, and which now or hereafter may be authorized by law, not inconsistent with the purposes and powers herein specifically stated." After organization the corporation employed and paid agents to search the records of the Surrogates' Courts in the metropolitan area and to furnish it with the names of intestate estates. The work of the corporation consisted of locating and identifying next of kin or legatees residing abroad; obtaining from such next of kin or legatees authorization to represent and prosecute their claims to participate in the distribution of the intestate estate; preparing a family tree and explanatory statement of relationship; assembling birth, marriage and death certificates and other genealogical data required by the estate representative; submitting the required proofs of the estate representative; keeping in touch with the estate representative as to the progress of the administration and transmitting the information abroad; discussing with the estate representative the possibility of advances to the beneficiaries; approving or questioning bills for funeral and other expenses of the estate; transmitting or disposing of personal effects of the decedent; investigating and discussing with estate representative claims of creditors and alleged gifts of personal property; examining proposed final account and scheme of distribution; waiving citation upon judicial settlement of final account; executing receipt and release upon distribution; transmitting funds abroad.

In connection with the authorization to represent claimants, the corporation obtained powers of attorney authorizing it to take any step that the claimant might ever have occasion to take, including the employment of an attorney to render any legal service that might be required.

In due time, proceedings to dissolve the corporation were instituted by the New York County Lawyer's Association. Later the respondent Tuthill, who had been employed by the corporation to represent claimants, advised the Association of the Dissolution of the corporation, which had been admittedly organized "for the purpose of avoiding the interdiction against solicitation of business by attorneys," but he did not reveal the fact that a new corporation had been formed in New Jersey bearing the same name as the New York Corporation, with the intention of carrying on from New Jersey the business which had been considered a violation of the New York Penal Law.

The activities of the New Jersey corporation had received severe condemnation in Matter of Wellington's Estate, 154 Misc. 271, 276 N. Y. S. 946, 948. Mr. Surrogate Foley there said:

"The New York corporation was actually dissolved in February, 1930, but the promise of an abandonment of the business by Woerndle and his attorney, Tuthill, was a mere sham and pretense, for within a few months a New Jersey corporation of the same name was formed which carried on the same business in the same flagrant manner. Woerndle and his corporation simply transferred their place of business from New York to New Jersey. The same method of searching, solicitation, and the collection of exorbitant and unreasonable amounts has been continued for the past four years in New York State. Tuthill testified that since 1930 he has represented the Transatlantic Estates or Woerndle in approximately forty-nine estates in this court under powers of attorney made by foreign heirs to the New Jersey corporation or to Woerndle His activities since the dissolution of the New York corporation have been no different from his representation of the New York corporation in the preceding years. Tuthill received out of the compensation paid to the coporation a fixed percentage for his own services."

Judge Martin said:

"The record leaves no doubt that respondent was aware of the fact that the corporation obtained its business through solicitation. As an attorney, respondent could not

himself so solicit. In accepting engagements from the corporation, respondent was doing indirectly what he could not ethically do directly. Respondent was retained by the corporation in about one hundred and fifty-six matters, in about fifty-six of which it was necessary to file notices of appearance in court; the gross amount collected by the corporation in these matters was $451,491.38, of which it retained $44,559.99, and paid respondent $16,225.96.

"The relationship of attorney and client did not exist between respondent and those for whom he appeared as attorney of record. He was, in reality, the attorney for the corporation which selected and employed him, to which he accounted and which fixed his compensation.

"He wholly disregarded the 35th Canon of Ethics of the American Bar Association, which provides as follows: 'The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.'"

Committees Join in Memorial to David J. Gallert

The Committees on Professional Ethics of the American Bar Association, the Association of the Bar of the City of New York, and the New York County Lawyers' Association, joined recently in a memorial to David J. Gallert, of New York City, who died on January 18, 1939. Mr. Gallert had been a member at various times of all three committees, and, in the language of the memorial had brought to his work on the committees "the resources of a high integrity, a generous enthusiasm, and a practical, active and acute intelligence."

Business Associations and Their Directories—Unapproved Law Lists

The Committee has had called to its attention recently several publications of so-called business associations, which contain classified directories of their members, including lawyers. The association announces that its purpose is to promote the business interests of its members and urges its members to patronize one another. Such publications solicit business for the association's members, and those members who are lawyers violate Canon 27 of the Canons of Professional Ethics.

The Committee has deemed it its duty to write to members of the American Bar Association whose names appear in such directories, informing them that such listings violate Canon 27. Almost invariably they have expressed appreciation and have given assurance that there will be no repetition.

A similar course has been followed where lawyers' names appear in unapproved law lists. Since the Canons were amended in 1937, it is improper for lawyers to permit their names to be listed in law lists that are not approved by the American Bar Association. See Canons 43 and 27. For more than a year the Special Committee on Law Lists has been engaged in investigating and considering the various law lists that have applied to it for approval. It has approved about fifty. Some have been refused approval; others have not applied. When the Committee on Law Lists informs the Committee that an unapproved law list continues to be published, this Committee has considered it to be its duty then to inform members of the American Bar Association in such lists that the appearance of their names therein constitutes a violation of Canon 43. Their cooperation in withdrawing from such lists will greatly aid in the achievement of the purpose for which the Committee on Law Lists was established and the Canon adopted, namely, the weeding out of those law lists that do not measure up to the standards deemed essential to genuine service to the profession and the public. No lawyer whose name appears in an unapproved law list should be offended on receiving a letter from this Committee, nor should he consider that this Committee has acted in an ex parte manner in determining that the appearance of his name in an unapproved law list violates a Canon of Ethics. When the list is unapproved, the conclusion that Canon 43 is violated is inevitable. The Committee assumes that members of the Association would not intentionally violate the Canons and would want to be advised of an inadvertent violation so that they can prevent a repetition.

A Form of Letter Dating Condemned

A firm of lawyers planned to date all letters going out of their office as follows: "January 1,—Of the John Doe Law Office—82nd Year—1939," the idea being to call attention to the long continuation of the firm in one family.

The Committee held that this constituted an improper form of advertising or solicitation, since notation of the date of founding the law office is foreign to the purpose of the dating of a letter and appears to have as its purpose the procurement of business.

THE COMMITTEE ON PROFESSIONAL ETHICS & GRIEVANCES
H. W. ARANT, CHAIRMAN

Informality in Appeals to House of Lords

(From the Scottish Law Review—May)

"There is apparent an absence of formality about the appeals to the House of Lords, in that none of those august Lords of Appeal in Ordinary wear judicial costume, such as they wore before their promotion to the Upper Chamber, save the Lord Chancellor who, if present, as he was in the appeal just mentioned, appears in his full-bottomed wig and his silk gown. The air of informality when the Chancellor is not present and presiding has often struck those who have visited the House. It also greatly struck an American lawyer who came to this country some years ago and made it his duty and pleasure to see for himself how justice was administered in our Courts, and to note any points of distinction between the habitudes here as compared with those of his own country. He noted the absence of forensic costume by the judges taking part in the hearing of appeals in the Lords, while the members of the Bar, when King's Counsel, were garbed in their silk gowns and their full-bottomed wigs. . . . The Lords he described as sitting on the benches with 'their thumbs hitched to the armholes of their waistcoats.' . . ."

A LAW SCHOOL BRIEFING SERVICE

Account of an Interesting and Successful Experiment Which not only Brings to the Door of the Small Town Lawyer the Resources of a Nineteen Thousand Volume Library but also Serves to Give the Student a Realistic Approach to Legal Problems and Develops Relationships between Him and Practicing Attorneys

By James E. Fahey
Member of the Kentucky Bar

LEGAL clinics run in connection with university law schools have long enjoyed considerable popularity both in this country and abroad, but for the most part such clinics have been confined to the customary moot court and legal aid society. A few prominent educators have felt for some time that to meet the increasing need for a realistic approach on the part of the student, and to develop relationships between law students and practicing attorneys, something more than these two traditional elements of the clinical work was necessary. To remedy this inadequacy the University of Louisville School of Law has developed a unique third sphere of activity in clinical work in the form of a briefing service, and it is the purpose of this paper to give the reader an acquaintance with its organization and with the results obtained in its operation.

The idea of such a service was the brain-child of Dean Joseph A. McClain, Jr. A pioneer in the development of educational innovations, Dean McClain was quick to appreciate the advantages of close contact between bar and law school. As a consequence, he set about to devise a program by which such contact could be fostered and which at the same time would offer to law students the benefits of clinical work. The idea of a briefing service seemed a solution to this enigma, and as early as 1927, Dean McClain inaugurated what is believed the first service of this nature at Mercer University Law School, Macon, Georgia. When Dean McClain came to Louisville in 1934, it was natural that he should begin his duties with the institution of this service at his new post. Hence in October, 1934, the University of Louisville School of Law Briefing Service was established. During the past four and one-half years it has been in continuous operation with the exception of the summer sessions, and, under the able guidance, first of Dean McClain and later of Dean J. N. Lott, Jr., has completed the preparation of some two hundred briefs.

Upon the decision to initiate this service, whereby lawyers throughout the state were to be invited to submit questions to a briefing staff of proficient law students, it at once became necessary to acquaint the Kentucky bar with the proposal. Letters, therefore, were sent to newspapers throughout the state, requesting the publication of an accompanying news squib presenting the details of the service and the conditions under which it would be rendered. This procedure has been followed at the beginning of each school year, and has recently been supplemented by letters sent to Circuit Clerks throughout the state requesting that an enclosed notice similar to that sent to the newspapers be posted by them in their court houses. The response to these solicitations proved immediate and encouraging, and recently, in some instances, more than could be cared for. Conditions imposed upon the submission of briefs were few. The staff asked only that the attorney referring the brief be licensed to practice in the State of Kentucky, and that the problems submitted be of a type which could not be solved by simple recourse to local materials available in the lawyer's own library, but rather questions that could be satisfactorily briefed only with library facilities beyond his command. Despite these terms a few briefs have been submitted which indicate indolence or inadequate training for the legal profession rather than lack of adequate library resources. However, since the staff feels that it can render a real service to the court by saving it time and trouble in making independent searches for authorities in questions of this caliber, and since it is realized that without the good will of the bar the service could not continue in operation, such requests are quite generally answered. Also, an occasional question will be submitted by a layman, despite the fact that from the very beginning of the service it has been emphasized in all public announcements concerning the Briefing Service that it was available only to lawyers. Such inquiries for obvious reasons, must be turned down by the Service, though some of them are well calculated to awaken the sympathies of their readers. Some, it is true, come from miserly laymen of some means who desire to avoid the payment of attorneys' fees they are well able to meet, but others come from inmates of penal institutions and gullible illiterates who have been misused by unprincipled attorneys. One irate Mississippi negro wrote that he wanted the Service to sue an insurance company for one thousand dollars because a falling tree had broken his little toe and he felt that he had been "mistreated." As pathetic as some of these appeals are, because of the nature of the Service, they must fall upon deaf ears. The legal aid society run in connection with the Louisville Law School can serve only residents of Jefferson County, and as a consequence the Service must regretfully inform the writer that he must look elsewhere for aid.

Appointment to the Service is based at present solely upon academic records, although competition among students who have the requisite scholastic standing is contemplated. While members are drawn chiefly from the junior and senior classes, one or two first year students with exceptionally high grades are often selected for the staff. The opportunity of being chosen for such work serves as a stimulus to these students to secure high first-year academic standings,

and there are usually some problems which, under strict supervision, they can prepare adequately. It is of course recognized that acceptable briefs must be prepared or the service will prove of little value to the attorney. Consequently, a grade average of "B" or better is required of all students before they are permitted to work on the staff.

At the beginning of each year some member with experience is elected by the group to serve as Research Supervisor. This student, chosen because of particular legal and executive ability, is charged with the duty of editing all briefs prepared by his ten or twelve colleagues and in particular with giving assistance to the new members of the staff. He assigns the problems as they are received, and checks frequently the progress individual students are making on their briefs. As a rule one student does the entire work upon each problem he is assigned, but if the problem can be readily broken down into several minor ones, and particularly if the attorney is in a hurry for the brief, several members of the staff may be designated to work on it.

It is also the duty of the Research Supervisor to conduct all the correspondence of the Briefing Service. When a request is received it is at once acknowledged and the attorney is informed that his brief will be forthcoming in about three weeks. This time limit is far from a hard and fast rule, however, and the referrer is informed that if for any reason he is desirous of receiving the brief before the expiration of that time, priority will be given it. In cases where sufficient facts are not given in the first communication, the necessary additional information is sought in order to handle the case set forth in the lawyer's letter; it frequently becomes necessary for the service to obtain the complete record in the case, if it is an appellate one; and, strange as this may seem, quite often the questions are submitted in such a way that it is impossible to tell on which side of the controversy the attorney submitting the problem is aligned. Copies of pleadings are often necessary, though in the majority of cases the problem is submitted before these are drawn. This gives the staff a much freer rein in regard to the theory upon which the suit should be brought, and in a few cases allows members to try their hand at the composition of a petition or a bill in equity.

Another duty of the Research Supervisor is to render aid in the actual preparation of the brief in more difficult cases, or in cases where the member is inexperienced in the particular legal field wherein the problem lies. Of course the Supervisor makes every effort to assign members briefs covering fields in which the latter have had formal law school courses, but this is not at all times feasible. If the problem proves to be a truly tough nut to crack, and there are not a few of these sent in, recourse is had to advice from a member of the faculty who serves a function comparable to that of a law review Faculty Adviser. While it is impossible for the Faculty Adviser to examine carefully all briefs which are turned out, the general supervision which he exercises over the service assists very materially in its administration.

An analysis of cases handled by the staff during the period of its existence provides some interesting statistics in support of claims made to the accomplishment of its aims. It has been stated that the service is rendering a real aid to the Bar of Kentucky by bringing to the door of the small town lawyer the resources of a nineteen thousand volume library. This becomes apparent when statistics reveal that 142 of the 200 cases available for study, or 76 per cent have come from towns other than Louisville. 132 of these, or 66.1 per cent came from towns of less than 30,000 population; 95 or 47.5 per cent came from attorneys located in towns of less than 5,000; and 67 or 33.5 per cent of the cases came from towns of less than 2,000. These figures, it is felt, show that the service of the staff is reaching to communities not within easy access of comprehensive library facilities. So far as can be ascertained from the correspondence with these attorneys, it is apparent that by far the largest part of them would be quite capable of solving the problems they have submitted, were adequate library resources open to them. An analysis of the cases submitted clearly shows that for the most part they are problems about which the authorities are in conflict, or upon which there is no local authority. It is in these cases that the staff with its comprehensive command of authorities of other jurisdictions renders a real aid to the perplexed attorney. As to the inquiries originating in Louisville, it can be said that for the most part they have presented problems of unique character or of first impression.

The two hundred cases briefed, presenting a wide variety of problems, may be grouped as follows:

Administration of Estates, 5 cases; Administrative Law, 5; Agency, 3; Bankruptcy, 1; Conflict of laws, 5; Copyrights, 1; Contracts, 13; Constitutional Law, 6; Criminal Law, 11; County Jurisdiction, 1; Deeds and Mortgages, 4; Domestic Relations, 7; Damages, 5; Elections, 2; Eminent Domain, 1; Evidence, 2; Federal Jurisdiction, 1; Insurance, 14; Interstate Commerce, 2; Laches, 1; Municipal Corporations, 2; Negotiable Instruments, 6; Oil and Gas Leases, 4; Civil Procedure, 19; Public Utilities, 5; Personal Property, 1; Real Property, 11; Statutory Construction, 3; Suretyship, 3; Sales, 2; Torts, 29; Trusts, 9; Taxation, 13; Wills, 3.

That the work of the staff has been warmly received by Kentucky lawyers is forcefully demonstrated by figures which show that out of the 69 briefs completed during the academic year 1937-1938 and the first three months of the academic year 1938-1939, nearly 30% have come from attorneys who had previously sent in one or more requests.

Although every effort is made to exhort the attorneys who use the Briefing Service to inform the staff as to the final disposition of the cases, comparatively few have attended such pleas. As a consequence no figures are available as to the number of cases in which the staff's work has met with ultimate success in the courts. The information which is obtainable, however, has proved most heartening. In two reported cases[1] which the staff was able to locate, the Kentucky Court adopted completely the theory upon which the staff's brief was constructed, differentiating cases on related points upon the same ground which the brief used, and adopting almost verbatim some of the language found in the brief. Further, a number of attorneys have written in high praise of work completed for them.

One lawyer writes:

"On day before yesterday the Court of Appeals reversed the McCracken Circuit Court and sustained my

1. Davis et al. v. City of Paducah (1938) 273 Ky. 108, 115 S. W. 2d 578, Greenup County v. Speers (1937) 259 Ky. 114, 81 S. W. 2d 905.

position on the authorities furnished me by the Law Department of your school.

"I write this letter to thank you and Dean McClain very much for this brief, which the court held to be a splendid presentation of the law of the question involved.

"The lawyers of this State are indeed fortunate to have this service at their command. This service is very valuable for the lawyers of the State and adequate words are not available for me to express my appreciation of your service and cooperation.

"Again thanking you very kindly, I am

"Your sincere friend,"

Another letter reads:

"I appreciate very much the service your school is rendering in this manner and believe it to be a plan which is beneficial both to the students who prepare the briefs and the attorneys who receive them. I think Mr. ——'s brief is a most creditable piece of work, as it shows that he has put time and attention in his study of this question. I think he should be commended."

These are but two of a score of such letters which crowd the staff's files and offer adequate reward to members for the time and painstaking effort they spend in their work. Nothing proves more heartening and encouraging to the average individual than the approbation of his colleagues, be he lawyer or ditch-digger, and such high praise cannot but give the embryonic brief writer the thrill of accomplishment. He gains a feeling of importance and confidence which nothing else in this period of his life could afford him, the realization that he is actually doing work of consequence in legal fields.

It is believed that the foregoing makes out a case for the Briefing Service as regards its value to the Kentucky Bar and hence to the community generally. But what of its worth to the Louisville law student? It is believed that even a stronger case can be presented from this approach.

Perhaps the principal benefit is that this work gives the students an opportunity *to actually prepare a brief*. They have the chance to sink their teeth into something actual, vital, and of consequence to some one; a welcome relief from dealing with the hackneyed suppositious cases of class-room and examination. After such training as this, the student who is called upon to prepare a brief on his own case will find himself unhandicapped by much of the timidity which grips the uninitiate. As one member of the staff, now employed by a large Louisville office put it, "When they assigned me a case to brief, I wasn't scared a bit." He knew what was desired of him, he knew where to go for his authorities, and he knew the form in which they should be arranged.

Moreover, the students have the opportunity to brief questions with which the members of the Kentucky Bar are confronted. Thus, since the majority of them will practice in Kentucky, they begin at an early stage in their legal careers to familiarize themselves with problems which are the most likely to confront them later in practice.

Since in some cases the facts are submitted before any step toward commencement of the suit is taken, the student has occasion to build the case from the very beginning, to do real constructive work which is often not afforded even by law review training. Also, inasmuch as any student who desires to do so may assist a member of the staff in preparing a brief, the experience and training offered by this work is afforded to all students in the law school.

Because of the nature of these advantages the cause of legal education is furthered in many important ways. Whether the law schools are ready to admit it or not, they find themselves faced with a bored group of students in their third year classes; a group of students, the more adept of whom find themselves masters of the law school technique of study to the point where a few hours' daily preparation proves sufficient to enable them to successfully complete their curricular activities. Something is needed to awaken an interest in these students and stimulate their efforts toward obtaining practical legal experience under competent guidance.

In our larger schools the problem is answered with student-directed publications, but with law schools whose financial appropriation will not enable them to carry a law review to the point where it becomes self-supporting, a different solution must be devised. A briefing service offers a practical and effective answer to such problems in the following manner:

No small number of cases are appellate ones, and necessitate analysis of the entire lower court record. Such a study is of great aid in supplementing the student's perusal of opinions found in his case books. It should be the aim of the modern law school to develop in its students a capacity to predict in any given case, with some measure of real understanding of what he is about, what decision the court is apt to make. A study of case records leads to a fuller comprehension of how cases are won or lost. Of the many factors which influence a judge or jury to decide in a certain way, but a few are set forth in the opinion. Such factors unexpressed in the opinions are frequently the most important in stimulating the decision. The briefing work thus gives the student an insight into the constituents of a case which are absent from the judicial opinion. It vigorously jolts complacent beliefs in the exactness of law which so frequently are entertained by the student. Indeed, it is in the weeding out of such false aspects of the lawyer's task that the Briefing Service makes its greatest contributions to a rounded legal education. The student becomes aware for the first time, that the interests which he must seek to advance are those of *clients*, rather than the finely spun nets of legal theory; that *clients* care not one whit for the legal grounds of decisions; that *clients* are interested in what the courts in fact will do to them or for them; and finally that to serve his clients with any measure of success, he must play his cards on vastly broader tables than the chair boards of judicial opinions. Coupled with moot court and legal aid work, the briefing service phase of the clinic enables the law student to see actual legal operations and participate in them; to gain experience in calling and examining witnesses, to appreciate the importance of small details, to perceive how legal rights turn on the faulty memory, the biasness, the perjury of witnesses; to learn the nature of draftsmanship, how lawyers try to translate the wishes of their clients, often inadequately expressed, into wills, contracts or corporate instruments.[2] It is through such clinical work that Louisville is able to turn out law students who quickly take a prominent place in the Kentucky Bar.

The school itself is well served by the functions of the Briefing Staff. A service which punctually furnishes ably compiled authorities gratuitously to attorneys in real need of such assistance, cannot help but

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2. Cf. Frank, Why not a Clinical Lawyer-School? (1933) 81 U. of Pa. L. Rev. 907.

THE VALUE OF OFFICE MANAGEMENT

Changing Conditions Surrounding the Practice of Law Must Be Met by a Readjustment of the Lawyer's Methods—Arrangement of Office—Keeping Time Record Is Particularly Important—Elimination of Waste, Simplification of Procedure and Standardization of Various Operations—Not Necessary for Practitioner to Do All the Work of Office Himself—Necessity of Maintaining a Trust Account etc.*

By Dwight G. McCarty
Member of the Emmetsburg, Iowa Bar

THE lawyer of today occupies a different position from that of his predecessors of fifty years ago. He is functioning in an entirely new way, and in an entirely different environment. His relations to the social structure have changed. The lawyer can no longer do business in the same old-fashioned way. The glamour of the courtroom and the romance of advocacy still cast their spell over the profession of the law in a few exploited cases. But for the general practitioner the trial is a prosaic experience. The fact is that the bulk of the lawyer's work is done in his office. There is no blare of trumpets, nor widespread publicity as he sits at his desk, but for every day he is in court, he spends many days in his office.

The conditions surrounding the practice of law are changing. Competition is becoming keener. Litigation and the actual trial of cases have fallen off to a very marked degree the country over. Legal business has decreased along with the decline of business following in the wake of depression conditions. To make matters worse, the law schools are turning out new lawyers at a rate that precludes their absorption in an already overcrowded profession. The unauthorized practice of law by banks, trust and title companies, hostile legislation, the increasing jurisdiction of boards and bureaus and special jurisdiction of fact finding bodies, like the labor relations, social security and securities commission, are all tending to change and curtail the practice of law.

Moreover, the demands upon the lawyer's time are multiplied while consultation and litigation fees are not commensurate with the increased standard of living. The volume of mail is rapidly increasing and the writing of letters and routine office work steadily encroach upon the valuable time that should be devoted to more important matters.

We all know that the conscientious hard working lawyer of today is not being paid in accordance with his ability and results. Business pays much larger returns and offers better inducements for successful advancement. Machinery and modern science have revolutionized trade and industry. It has become the age of big business. In this business world the lawyer must be a business man to keep pace with all this progress.

These changing conditions must be met by a readjustment of the methods of practice. The lawyer must become familiar with business, in order that he may become the adviser of the business man, and help in the solution of the many problems of present day business life. It is the lawyer who is equipped to handle this sort of practice, who is successfully meeting the new competition.

How can a lawyer act as a business adviser unless he himself displays business judgment and has a modern office organization. Clients nowadays pick legal counsel with care. They are not going into dingy cluttered offices to ask advice about their business problems. The modern business man knows that dust and confusion in a workshop or office usually indicate a mussy method of work. Unsystematic manual methods generally signify unsystematic mental processes. No lawyer today can afford to thus advertise to the world his shortcomings.

The first thing to do, therefore, is to provide an attractive office. That will bring business and be a real asset. It is in bad taste, however, to furnish an office in an ornate manner or with lavish extravagance. An office is a place for work and not for show. Clients mistrust expensive showiness, as they know that they are helping to pay for the extra glitter. Dignity and good taste should mark the furnishings and decoration of the law office. Nor can any lawyer afford to have a shabby or untidy office. A shabby office brands him at once as untidy and slipshod in his work.

The first impression of an office is often a potent influence in forming a client's opinion of the firm. All callers should be courteously received, their business given prompt attention and their stay made as pleasant as is consistent with the efficient transaction of business. The receiving clerk or stenographer in the outer office thus becomes a dispenser of good will. Much depends upon her manner and method. The rule in law offices the country over is courteous treatment of clients. This comes naturally from the high class service which the lawyer renders and from the fact that the stenographers and clerks are of the best. It is rare indeed to find an office where ordinary courtesy is not accorded clients. But the degree of intelligence exhibited is another matter and the kind of reception that shows real service is not as common as it should be. It might be worth your while to check up and find out what is going on in the outer office.

The arrangement of the office is also important. It is service to clients that counts and it takes a business office to furnish such service successfully. The office should be clean and sanitary, well lighted, ventilated and heated, and with every convenience possible

*Address delivered before the Nebraska State Bar at Lincoln, Neb. on Dec. 29, 1938.

to provide for the comfort of the office force. The office should be so arranged with reference to the location of desks, files, safes, chairs, tables, bookcases and other equipment, as to be convenient for work and avoid congestion, duplication or criss-crossing. The flow of work and continuity of operation should be in single file and with a natural sequence as it progresses through the office. This means simply doing the work efficiently and without waste of time or effort. It may seem that this is a mere commonplace, but it is surprising how few offices really attain this result.

The average lawyer's desk is like a funnel through which the business of the office passes and as it piles up at the large end, he wonders why it clogs at the small producing end. "My work is never done," says the busy lawyer, "the day isn't long enough to get half my work done." And yet simple efficient methods may easily double the hours of the day by making it possible to do twice the work with less effort.

It is Ruskin's "not great effort but great power" that is achieved. The elimination of the non-essential, increases the power for essential effort. It is learning how to concentrate on the things most worth while in life.

I do not, however, want to be understood as saying that there are no efficient and up-to-date law offices. There has been a wonderful development in this respect in the last few years, and modern law office organizations are now to be found all over the country. The dingy old law office with its cluttered confusion of books and papers, its dusty pigeon holes, mussy letter press, and unwashed windows, is a rare spectacle nowadays. But even in the clean and orderly looking office, the methods of work may still be old fashioned and wasteful in the extreme. It is in the operations of the office that the modern methods are accomplishing such decided results.

It is inconceivable that the lawyer with all his brains and all his talents, during all these long years, has been toiling along in primitive fashion—making bricks without straw.

The time at my disposal will only permit a brief reference to some of the more important of these modern law office methods.

Keeping a record of time is a very necessary requirement. Time records not only enable the lawyer to keep tab on his time, but assist in scheduling and dispatching his work, making up statements and proving up his services in court. The Time Record is the basis for a number of effective methods for increasing the lawyer's productive quota.

More attention is being given to the filing system and desk arrangement in offices today. It is vitally important to be able to find papers when needed and therefore an orderly system that makes papers and documents findable is indispensable. Such a system however must be simple and not so complicated as to absorb more time and effort than necessary to give effective service. There is such a thing as too much system but a standard method gives maximum service for minimum clerical attention. Under the modern system, indexes, dockets and such time-consuming devices are largely eliminated. This department is a fruitful source of waste and trouble if not properly designed and kept up to date. It will pay every lawyer to check up on his filing system.

The elimination of waste in office procedure is one of the basic factors of efficiency methods. Charles Lamb gives the classical example of inefficiency in his description of the man who burned down his house in order to have roast pig.

Simplification of the office procedure and standardization of the various operations are very effective in reducing mistakes, improving the standard of work and increasing the day's output. By entering these standard operations in an "Office Manual," they are always available for the office force and are a great help in breaking in new help. Time-saving forms and appliances are a valuable aid in cutting down unnecessary work.

It is said that Abraham Lincoln used to carry his legal papers in his hat. Many lawyers depend on their memory to keep track of their business. The business of the modern law office is diversified and often times involves considerable responsibility. No lawyer can afford to depend upon his memory alone, nor can he risk a haphazard record of important matters. A simple little device handles this problem. A tickler and dispatch board is the office brain of a modern organization. It is the infallible reminder that brings up business for attention on the proper date, and prevents overlooking important matters, the filing of pleadings or the preparing of briefs or other papers. It brings order out of chaos, relieves the mind from the burden of details and releases more time for productive work.

One of the ideas which the lawyer seems slow to appreciate, is that it is not necessary for him to do all the work of the office himself.

Lawyers so often think that clerks and stenographers cannot do much law work outside of mere typing and routine filing. This is not only a mistaken idea but it results in tying down the lawyer with a tremendous amount of petty details and routine tasks that could as well be done for him. Standardization gives certainty to this kind of work. The delegation of routine tasks to subordinates is a very effective way to save valuable time for the members of the firm.

The use of form books containing form letters and forms of pleadings is an important aid in this respect. Forms prepared from time to time are put in these books. Instead of dictating these same letters and pleadings over and over again the number is given to the stenographer and she prepares the necessary documents. The original form having been carefully prepared and checked up, the attorney knows that it is right. He also knows that whenever these forms are used that they will be correct. He thus maintains control and supervision over the work done without the necessity of doing the work himself and yet it is as well done as he could do it personally. The lawyer's time is valuable and every minute should be devoted to important work. Ordinarily it is advisable to take care of this routine, one hour in the morning and one hour at the close of the day.

Dictating machines and other appliances are of great utility in effecting economies of operation and increasing the production of the office. A great many timesaving forms and methods are now being used in many offices that were unheard of a few years ago and these various devices are effective factors in helping to give up-to-date service.

The self-indulgent and easy-going never accomplish great results. It requires energy and power to cut down the bumps, remove the obstructions, and smooth out the road of progress. Modern labor-saving devices are not for the ease-loving but for the ener-

getic. The progressive individual is not satisfied with kerosene lamps, dusty pigeon holes, and unwashed windows. He knows the importance of modern equipment in helping him to give up-to-date service to his clients.

Many other methods might be discussed but I have only time to refer to the bookkeeping system and the method of charging. Few lawyers know what it costs them to do business. The old day book and ledger method is now antiquated. The lawyer should know his overhead, the cost of doing business and the other accounting details of his business, the same as the business man keeps tab on the records of his business. A modern method of bookkeeping has been worked out designed especially for law offices, simplifying the various operations and yet giving all vital records necessary in practice. It provides not only a satisfactory accounting system but is a decided saving in time and energy over former methods.

In this connection attention should be called to the necessity of maintaining a trust account. All money belonging to clients should be kept in a separate trust account. This is not only required by good business, but it is imperative under the law. Courts have repeatedly condemned lawyers mingling clients' funds with their own, and declared that it is the duty of an attorney to keep his client's money as a trust fund, separate from his own, even in a case where there was no intentional fraud or deceit. That is the law in every jurisdiction. It rests on the basic principle of trusts.

In spite of this well known principle of law and the professional obligation of an attorney which requires him to be prompt and circumspect in the handling of the money of his clients, there are still many attorneys who carry only one account at the bank and mingle their own funds with those of their clients. One attorney did this so as to have the use of the money. "Why," he said, "if I carry a trust fund, I will have all that money lying idle in the bank and doing me no good. I might just as well have the use of that money as not." In other words, he is insisting upon using other people's money which he has no right to do. He is betraying the high principles of honor and integrity demanded from the legal profession and putting himself in the same class with the bank robber and the embezzler. That may seem like a strong statement, but it is the plain unvarnished truth when it refers to a lawyer who consciously and deliberately refuses to carry a trust account. There are many many lawyers who do this very thing unconsciously or without thinking of the chances they are taking. Every once in a while lawyers are disbarred for not accounting for funds of their clients and in practically every case, it will be found that they carried only one bank account and when unexpectedly called upon to account, were unable to reimburse the fund which they had used perhaps under stress of circumstances. An ex-president of the Commercial Law League of America, in an article in the Bulletin a few years ago, said: "I believe that I am safe in saying that at least 75 per cent of all the practicing attorneys in this country fail to appreciate the danger and do actually co-mingle their funds." It would be an alarming situation were it not for the fact that the high standard of integrity of the bar has been a shield of protection against an actual abuse except in rare instances.

No reputable attorney, no matter how strong his financial condition or impregnable his reputation may be, can afford to ignore the fundamental requirement of his trust. Every law office should carry a trust account and deposit all money of clients therein, transferring earned fees or ascertained commissions from that fund into the firm account only when it is definitely known that such fees belong to the firm. This is in accordance with law and will stand the test of disclosure in court, if necessary. It gives an added peace of mind and sense of security to the lawyers themselves, and also makes a good impression on clients, bankers and others doing business with a firm on that basis. A client receiving a check on a trust fund feels an added sense of security as he realizes that his money has been held in trust for him. The modern bookkeeping method for lawyers, provides for such a trust account and it is not a difficult matter for the bookkeeper to keep such account separate from the firm money and keep all trust funds intact.

There is one question in which the lawyer is always interested and which presents a perennial topic for discussion at Bar Association meetings. "How much should I charge my client?" There are so many considerations entering into the problem of charges and it may be viewed from so many angles, that it probably always will be an individual problem for each lawyer in each individual case. However, there are some underlying principles which, if well understood, will aid materially in deciding these questions as they come up in practice.

The various factors which may be taken into consideration in fixing a fee have been often stated by the courts and have been summarized in the 12th canon of ethics of the American Bar Association, which reads as follows:

"In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the case; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed or will involve the loss of other employment while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service."

These considerations in some cases may help to determine the size of the fee, but generally they only confuse the issue. The more you try to balance one factor with another and consider each fact in its bearing on other facts, the more you become involved in a maze of mathematical calculations that become too complicated to be of any practical value. The result is that most lawyers aim to charge what the traffic will bear and let it go at that.

Taking everything into consideration it seems more reasonable and practical for a lawyer to base his charges in most cases on the cost of rendering the service. A method has been worked out called the *basic time charge* which gives good results. The overhead cost of the office is first ascertained and this overhead cost is apportioned among the various productive members of the firm. Each adds to his portion of this overhead the additional income he should earn considering

his ability and experience, and the amount of business done by the office. This expected income, plus his part of the overhead for the year, divided by 300 working days, gives his daily charge and again divided by six gives the hourly charge. This represents what he must earn every day to pay his share of the overhead and give him his expected income at the end of the year. If he equals this daily charge, he will have reached his quota, if he exceeds it, he will have increased his income so much more. If this charge is fairly worked out on the basis of the business conducted by the firm, it will represent a reasonable basic charge, for each hour of work on a client's case. It will be a fair and reasonable fee in the great bulk of cases where services are rendered in the course of a lawyer's practice. All clients are charged alike on a definite basis that is fair and reasonable and capable of being fully explained in case of dispute. Of course, in large cases or transactions involving special conditions, much larger fees can be charged. But if the office in every case keeps track of the actual hours devoted to each client's business, making this basic charge for every hour, there is provided a reasonable basis that will in all cases assist greatly in fixing the amount of the final charge.

The basic time charge is the basis of the charges on a client's bill. But it is only the basis. It is not the final charge. It is recognized as merely a minimum. Before a bill is rendered it is proper to canvass the situation and determine what a proper charge would be in view of all the circumstances of the case. This makes every charge dependent upon the service to that client. It is an individual charge for individual service. This is in line with the well known principle of professional ethics that the relations between a lawyer and his client should be personal and confidential. This method has worked out very satisfactorily in law offices all over the country and its wider adoption will undoubtedly create a greater stability and satisfaction in this difficult field of the lawyer's activities.

An adequate system is absolutely essential in an expanding law office. It is a necessity in detecting waste and lost effort, preventing over-expansion, and keeping the entire organization working at the highest productive capacity. No greater mistake can be made, however, than to assume that efficiency methods are all right for a large office, but are not applicable to a small law office. In a small office where one person must do many tasks, and there is no chance for much division of labor, is the very place where there is apt to be the greatest waste of time and loss of effort. The lawyer who putters around at many routine tasks, is sure to find at the end of the day that he has not accomplished very much. Modern methods can be used to advantage by every lawyer, no matter what kind of an office he maintains. Progress is essential if the lawyer is to keep up with the forward march of business.

There is one thing that cannot be too strongly emphasized. The standards are basic only, and lend themselves to the conditions of each particular office. Each lawyer works out these methods in his own individual way and according to his temperament and the nature of his organization. The completed processes fit his situation. The standards are not hard and fast rules, but are flexible, and designed to meet the conditions of varying kinds of practice.

It is the function of management to perfect an efficient organization of the business and apply an effective system to its operations. Management then is the ultimate control that gives direction to the planned procedure.

The one great obstacle which prevents the general acceptance of these principles, is the conservatism of the lawyer. We lawyers have worshipped precedent so long that we find it hard to accept innovations. There are those who refuse to see any merit in these new discoveries and contend that the law office is different and can never utilize the methods of business. It is no more improper to use modern appliances and methods than to maintain law libraries, filing cases, chairs or desks. The technique of these modern methods is but the means to a desired end. Such equipment is the instrumentality by which service is rendered clients. It does not interfere with the ethical obligations nor the traditions of the profession, nor with fiduciary relations, to use modern methods in the office procedure. It is of course recognized, that spirit and vision are necessary for creative results. But of what use is spirit alone? Without some medium of expression it is impotent and valueless. It is mere daydreaming. The most stimulating thought in the mind of an author is as dead to the world as if buried in the depths of the earth, if not transcribed on paper where all may read. The most beautiful picture is merely a vision of the artist until he takes his brush and colors and puts it upon the canvas. The dream of a Langley, Curtis or Wright would have remained a dream if they had not built practical machines and tried to develop the actual art of flying.

Management applied to the office organization relieves the mind from strain and worry and gives that freedom that enables the soul to soar to higher realms and revel in the prowess of constructive achievement.

Another factor which retards the acceptance of these new principles is habit. Psychology has long recognized that we are creatures of habit. The new psychology attempts to explain all human behavior in terms of responses to stimuli, and places a great deal of emphasis on habit equipment. Watson says personality is but the end product of our habit system. James said most people do not learn after they are thirty years of age. This is not because they can't but because they are not so inclined. It is easier to keep on doing things in the same old way. We have to unlearn what we have already learned and learn the new in its place. This requires effort and force of character. But it is only thus that progress can be made. This is the only way to meet the new conditions.

The man who is contented and satisfied with his present lot is in a rut. He has ceased to grow. Let us make up our minds that as lawyers we are going to grow as life around us grows. Let us resolve to be in the van of the procession instead of trailing in the rear. Our offices should reflect our progressive spirit or else our clients may never know us in our true light.

It must not be overlooked that nothing will take the place of hard work in the practice of law. No machine has ever been invented that will do the lawyer's thinking for him. It is hard persistent application that counts as we all know. But at the same time a proper office organization will relieve him from much of the distracting details and needless worry, that wears down the mental and bodily powers. It is the very thing that will raise drudgery to the higher level of intelligent effort. Wise, indeed, is the lawyer who conserves his brain energy for the real problems of his practice.

Then also such an organized office will yield more

time for leisure, healthful relaxation and the social affairs of life.

Why grind out our lives in hopeless bondage to the practice. One of the leaders of the bar in a neighboring state, broken in health, and worried over family troubles, said to a friend of mine not long ago: "What a fool I am! I've been too busy to be a real father to my children, too busy to enjoy the companionship of my wife, too busy to be a friend to my friends and a neighbor to my neighbors. I've missed the very best things of life and now it is too late." Good health, recreation, and time for relaxation are absolutely essential. Management will solve that problem. It systematizes the work, eliminates worry and waste effort, saves time and energy, and releases a margin of time for recreation and the social side of life.

There is no need for pessimism. The lawyer has a definite function to perform in society. It will always be a necessary function. Change though it may, the need is still there. Looking ahead there are great opportunities for creative effort in the field of the law. That is the challenge of the future.

This is the purpose of my message here today, to stir up a resolution to keep pace with the changing law practice, and build a modern organization that will meet the needs of the day. Some of you are working towards that very result. It is your ability so to adapt yourself that will determine the success of your practice and the extent of your influence in the community.

The time at my disposal will not permit me to describe more in detail how modern business methods can help you in your office, nor suggest the various forms, methods and appliances that will aid in solving your problems. Only a few of the high lights have been suggested in this brief outline. It is a big subject and has many ramifications. It will repay careful study in applying these principles to the practical problems of a particular practice. This material is all published and available for anyone interested.

For the lawyer these things are vital. Creative work is the very essence of the law practice. Proper management makes all these things possible.

The lawyer must always conduct himself and his practice with dignity and good business judgment, that he may bring no dishonor upon his profession. Today as never before he must be true to the honorable traditions of the law, and assume the leadership and carry the responsibilities of present day life.

THE INCREASING NEED FOR BAR LIBRARIES IN THE SMALLER CITIES

BY WILLIAM R. ROALFE
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ALTHOUGH the legal profession can point with pride to a number of excellent professional libraries,[1] and here and there individual practitioners or small groups of lawyers are alive to the needs of the profession and are eagerly endeavoring to establish adequate libraries in their respective communities, the profession as a whole has remained singularly indifferent in the face of a problem which is becoming increasingly acute with the passing of every year—indifferent at least so far as effective action is concerned. This attitude is particularly noticeable in the smaller cities although it is certainly not true, as is generally supposed, that good working law libraries are not here essential; for, while the number of lawyers concerned, the sums of money involved, and the number of persons affected may be relatively small when comparisons with the metropolitan centers are made, the fact remains that on an average the incomes of the practitioners are smaller and it is far less likely that adequate private libraries will be developed.

But even in such communities as can boast of reasonably adequate private collections the situation is far from satisfactory when viewed from the standpoint of the local bar as a whole, or if the public interest is taken into account. Consider, for example, the younger lawyers, many of whom have been trained to take seriously the statement that "law books are the tools of the profession." Almost without exception they are hard pressed to make ends meet and have little or no money to invest in law books. They are, therefore, confronted with several altogether unsatisfactory alternatives. They must either impose upon some more firmly established lawyer with a private library, not a pleasant "duty" however willing the lender may be, or they must from time to time go to some distant library, in many instances beyond the confines of the county or perhaps even in another section of the state. What is more natural than that, under such circumstances, some of these younger men will most unwillingly join the ranks of those who "practice by ear" frequently at the expense of their clients and of the public at large as well. Needless to say, where litigation is involved, counsel for the parties litigant will fail dismally in their duty to provide the judge with the information and assistance to which he is entitled. Surely, in this complex age, the administration of justice presents obstacles enough, even when the fullest advantage is taken of the information available in print, however inadequate this may often be.

But it should also be noted that the judges may be confronted with an additional embarrassing situation, for in the absence of a law library available to the bar as a whole, they must frequently either do their official work in the private library of some practitioner or they must borrow his books. Under the best of circumstances such a practice exposes the judge to criticism, however unjustified it may be, and if the lawyer who has extended the courtesy (and perhaps he is the only

1. For a more detailed discussion see Roalfe, *American Lawyers and Their Books.* (1936.) 22 A.B.A. JOUR. 241.

one in a position to do so) is interested in pending litigation, the public has every right to assert that the profession has neglected to throw the necessary protections around the administration of justice—protections not only against actual abuse but against the suspicion of abuse as well.

Wherever this library problem arises some lawyers will no doubt be heard to say that no good purpose is served by pointing out either the need for or the desirability of having such bar libraries, as the expense involved renders such an undertaking altogether impractical. It goes without saying that there are numerous communities which contain such a small number of lawyers that anything beyond the most limited cooperation is impracticable, but many communities, believed by a substantial number of lawyers to be in this category, cannot, in fact, be so included. In every small city, and these are scattered all over the country, where the same expensive sets of law books can be found duplicated over and over again, frequently in the same building and sometimes on the same floor, and yet other highly desirable books are not available at all, it is ridiculous to assert that the question of expense is the chief obstacle. Each of such private collections has frequently cost several thousand dollars to assemble, and the annual maintenance bills are necessarily considerable. When to these expenses is added the rent for extra office space there can be little doubt but that the financial burden is usually out of all proportion to the benefits received, even by the few lawyers who are so fortunate as to be able to afford such libraries. Is not the public, which in the final analysis pays the bill, entitled to ask the question: "Is the local bar rendering a service commensurate with the cost?"

Thus it should be perfectly clear that in any community where such duplication is at all general there is some other obstacle which is preventing the development of such a working law library as should be available to the bench and bar as a whole, to supplement the printed materials that every lawyer should have immediately at hand if he can possibly afford them. Upon analysis, the fundamental difficulty will invariably be found to be an almost total lack of capacity for effective cooperation, a typical shortcoming of a profession which has until quite recently been guided by such a highly individualistic tradition that its own development has been seriously impeded, and even perfectly apparent self-interest has been sacrificed for the sake of avoiding any change in customary behavior.

Obviously, such an attitude alone is obstacle enough but that it can be overcome is conclusively demonstrated not only by the actual existence of highly effective cooperation with respect to a diversity of enterprises, but by the fact that here and there bar libraries have been established and successfully maintained in such smaller cities. Because conditions differ the same plan cannot be followed in every instance.

Each group of lawyers must no doubt carefully study local conditions to ascertain the probable sources of revenue, the number of lawyers and public officials who may be interested, and the most practical form of sponsorship. However, no local group need rely entirely upon its own efforts, nor must it altogether depend upon the slow and painful process of trial and error. In the first place, the fullest advantage should be taken of the experiences of lawyers in other similar communities. By so doing it will, among other things, be found that the gift of a lawyer's private library sometimes provides the nucleus around which such an enterprise is developed, that necessary funds may be derived from membership fees, gifts, contributions from the city, county or state, that it is not an uncommon practice for one of the latter to provide quarters without cost, and that custody of the books and supervision of the library may at the outset at least be provided at nominal cost through the employment of some person with other duties not inconsistent with his or her responsibilities as librarian.

In the second place, an additional source of helpful information should not be overlooked. The very conditions that are making bar libraries necessary have brought into being a highly specialized professional group, the law librarians, a group which is primarily concerned with these problems and is actively endeavoring to solve them. There can be no doubt about the fact that law librarians, both individually and through their national group, the American Association of Law Libraries, are willing to render all possible assistance. The field is obviously new and undeveloped and, hence, the answers to many questions are not yet in hand. Nevertheless, experienced persons are in the field and useful data is beginning to accumulate. It is obviously short sighted not to draw upon these sources of possible helpful information and assistance.[2]

However, there can be no doubt about the fact that a constructive attitude on the part of the lawyers themselves is a prerequisite to all further action. They must not only clearly see the need and feel a desire to satisfy it but a few at least must be imbued with that degree of enthusiasm that is required to bring to fruition any difficult undertaking. Certainly it is hard to imagine a more ideal objective for leaders of the bar to select for the purpose of bringing the lawyers of a particular community together in the pursuit of a common goal. A bar library is not only very much worth while on its own account, but because of its more or less neutral character, interest in it should allay rather than increase local jealousies and rivalries. Success in such a venture would almost necessarily engender a better professional spirit among the members.

As the younger lawyers, usually without law books of their own, are the most likely to feel the need and because they are generally more receptive to new ideas, the development of a bar library would seem to be peculiarly within the province of the local junior bar association. For the very same reasons the Junior Bar Conference of the American Bar Association and the State Junior Bar Sections might well give serious consideration to the opportunities that lie directly in their paths. Unquestionably the time is ripe for concerted effort. The phenomenal success of the institutes for lawyers, in reality a rather closely related activity, is a present demonstration of what may happen when a widespread but more or less vaguely felt need is met through the development of an effective program under the leadership of a few informed and intelligent persons.

2. Although it is primarily concerned with the larger bar libraries, a recent article by James C. Baxter, Librarian of the Philadelphia Bar Association, contains helpful information. See *Organization and Administration of Bar Association Libraries.* (1936.) 29 LAW LIB. JOUR. 142.

State Administrative Law Will Be Discussed by Section of Judicial Administration

AS a companion to the Association's special Committee on Administrative Law, headed by Chairman McGuire, which considered Federal Administrative Agencies, the Section of Judicial Administration in 1938 established a Committee on Administrative Agencies and Tribunals to consider the subject with reference to state legislation. This Committee, composed of Ralph M. Hoyt, chairman, J. F. Loughborough, Marvin B. Rosenberry, John B. Sanborn, Julius C. Smith, E. Blythe Stason and Robert B. Tunstall, submitted to the Cleveland Meeting of the Association a factual survey as to the status of state administrative law, which was printed in the report of the Section of Judicial Administration for 1938. Completing its work, the Committee submitted to the Council of the Section at Washington, D. C., on May 10, 1939, a further report, summarized below, considering the procedures of state administrative agencies and the judicial review of their findings. The report was unanimously approved by the Council and will be presented under the auspices of the Section at San Francisco, as one of the major topics to be considered.

The report of the Committee summarizes, classifies and compares the many administrative agencies of both the federal and state governments, analyzes the many construing decisions, and discusses in detail the principles and trends of administrative law.

The Committee finds that the Courts, in general, recognize the need for and value of administrative processes but consider the courts no proper part thereof and decline to undertake such a role by granting trials de novo on appeal. On the other hand, the courts generally are willing to examine the evidence upon which the administrative tribunal acted to determine whether the legal requirements of due process and fair play have been observed. The manner in which administrative agencies should proceed, the character of evidence upon which findings of fact are made, and the extent of judicial review all present problems which are highly controversial. After discussion of these, the Committee makes the following summary of its conclusions and recommendations:

1. That the method of judicial review of the determinations of state administrative tribunals should be prescribed in a single uniform statute containing the following features:

(a) That the reviewing court should be authorized to determine all questions of law, but that, except so far as contrary rule may be constitutionally necessary in cases involving alleged confiscation of property or violation of other constitutional rights, the findings of fact made by the administrative tribunal should be subject to reversal only if unsupported by substantial evidence or clearly erroneous;

(b) That the review should be confined to the record made before the administrative tribunal, except as the court, for good cause, may permit the taking of additional testimony before the tribunal itself;

(c) That the review in all cases should be by a judge without a jury.

2. That every state administrative tribunal should have statutory authority to adopt regulations for the purpose of interpreting or giving particularity to the standards of any statute administered by it, and such regulations should have the force of law until repealed by the tribunal or held invalid by the courts.

3. That rules of procedure to the following effect should be made binding on all the state administrative tribunals:

(a) That no information or evidence (outside of matters contained in regulations duly promulgated, or matters of which the courts would take judicial notice) may be considered in a contested case except such as has been introduced and made a part of the record at a public hearing, and that if the tribunal wishes to avail itself of information or evidence in its possession or furnished by members of its own staff or others in addition to that produced at the hearing, such information or evidence must be submitted to all parties and they shall be afforded an opportunity to cross-examine the informant at a further hearing;

(b) That whenever a decision is to be made in a contested case by a person or persons who have not personally heard or read all of the evidence or agreed abstract thereof, a tentative draft of the decision, including proposed findings of fact, prepared by a member or examiner or other subordinate, shall first be submitted to all parties in interest, who shall have opportunity to except thereto and to argue their exceptions before the person or persons who are to decide the case;

(c) That the findings of fact of administrative tribunals be required to state concisely, and without recitals of evidence or arguments, not only the decision reached upon the ultimate facts, but also the decision on controverted subsidiary facts on which the tribunal must necessarily reach a conclusion in order to decide the ultimate facts;

(d) That in administrative proceedings which are initiated by the tribunal itself, all parties must be furnished with a written specification of the issues which will be considered and determined, and opportunity shall be afforded them to present evidence and arguments upon those precise issues.

On the following matters discussed in this report, the committee makes no recommendation:

1. As to what particular courts in the several states should be the forum for the review of administrative determinations. This we deem to be merely a matter of local convenience.

2. As to the extent to which the rules of evidence which are used in the courts should be observed by administrative tribunals. Our reason for making no recommendation on this subject is that the situations arising are so diverse that no general rule or code of rules can be laid down.

The Committee has also presented a proposed brief model state statute, designed to provide uniform rules of practice for administrative agencies and to provide a uniform method of reviewing their determinations. This has been referred to the National Commission on Uniform State Laws.

Section 1. *Definition of Terms.* As used in this Act, the term "administrative agency" shall mean any officer, board, commission, or other tribunal (except a court) having statewide jurisdiction[1] and statutory authority to make any order, finding, determination, award or assessment which is by statute made subject to court review.

1. There may be situations in which a tribunal having less than statewide jurisdiction will be properly within the purview of the statute, as, for instance, a public service commission which has jurisdiction over part of a state. Such exceptional situations may well be taken care of by a proviso. The purpose in using the word "statewide" is to exclude local administrative activities such as zoning regulations, assessment of property for taxation, etc.

The term "person" shall include partnerships, associations and corporations.

Section 2. *Issuance of Regulations.* Every administrative agency shall have authority, after public hearing on such notice as the agency may deem adequate, to promulgate and from time to time to amend or repeal regulations for the purpose of interpreting or giving particularly to the standards of any statute enforced or administered by such agency, and all such regulations when duly published shall have the force of law until amended or repealed by the agency or declared invalid by a court.

Section 3. *Rules of Procedure.* The following rules of procedure shall be observed by all administrative agencies:

(1) *Evidence.* In the decision of a contested case, no information or evidence shall be considered by the administrative agency except such as shall have been duly offered and made a part of the official record at a full and fair public hearing; provided, that if such agency shall desire to avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff or others in addition to the evidence presented at such public hearing, it may do so after first transmitting a copy of such information or evidence to every party of record and affording each such party, upon request, an opportunity to present evidence thereon and to cross-examine the person furnishing such information, at a further public hearing to be called and held. Nothing in this paragraph, however, shall prevent any administrative agency from taking judicial notice of facts which are set forth in its duly published regulations, or of facts which are judicially noticed by the courts of this state.

(2) *Examination of Evidence by Agency.* Whenever, in a contested case, it shall be impracticable for all of the persons who are required by law to make or join in the decision to read or hear all of the evidence or agreed abstract thereof, such decision shall not be made until after a tentative draft of said decision, including such findings of fact as are required by paragraph (4) of this section, shall have been prepared by a member or examiner or employe of the administrative agency and shall have been furnished to all parties of record and opportunity shall have been afforded to each such party to file exceptions thereto in whole or in part, and to argue the exceptions orally or in writing, or both, before all of the persons who are to participate in the decision of the case.

(3) *Specification of Issues.* Whenever an administrative agency shall, pursuant to authority conferred upon it by law, institute an investigation upon its own motion or without the filing of a specific complaint, no decision shall be made by the agency until after all parties in interest shall have been furnished a written specification of the issues which are to be considered and determined, nor until opportunity shall have been afforded to the parties to present evidence and arguments upon the precise issues so specified.

(4) *Findings of Fact.* Every decision of an administrative agency shall be accompanied by written findings of fact which shall state concisely and explicitly, and without recitals of evidence or arguments, the ultimate conclusions reached by the agency upon all contested issues, together with its findings upon all controverted questions of fact on which such ultimate conclusions rest.

Section 4. *Review.* (1) *Proceeding for Review.* Any person aggrieved by a determination made by any administrative agency, other than a procedural order during the pendency of a case before it, may, within thirty days after the making of such determination (or within thirty days after final disposition of an application for rehearing, if such application is by statute made a prerequisite to judicial review), file a petition in ——— Court,[2] praying that such determination be set aside in whole or in part. Copies of such petition shall be served upon the administrative agency and upon all persons other than the petitioner who appeared of record in the proceeding before the agency; and the agency and all such persons shall have the right to participate in the proceedings before the court, together with any other persons who may be permitted by the court to intervene therein.

(2) *Record on Review.* Within thirty days after service of the copy of the petition upon it, or such further time as the court may allow, the administrative agency shall file with the court the original or a certified copy of the entire record in the proceeding under review, including all pleadings, notices, testimony, exhibits, reports or memoranda, exceptions, briefs, findings, proposed findings, decisions and orders therein; provided, however, that if there is filed with the petition a written election on the part of the petitioner that the decision of the agency be reviewed solely upon the findings made by the agency, the evidence taken before the agency shall be omitted from the record. The court shall have power to require or permit subsequent corrections or additions to the record when necessary to make the same complete.

(3) *Additional Evidence.* If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce it in the proceedings before the administrative agency, the court may order such additional evidence to be taken before such agency, upon such terms and conditions as to the court may seem proper. The agency may modify its findings by reason of the additional evidence so taken, and shall file with the court the additional evidence together with its modified or new findings, if any.

(4) *Scope of the Review.* The hearing before the court shall be before the court without a jury, and shall be confined to the record filed with it, unless testimony shall be offered as to a violation of paragraph (1) or (2) of Section 3 of this Act. After such hearing the court shall affirm the determination of the administrative agency unless it shall find that the same is not in accordance with law, or in violation of the constitutional rights of the petitioner, or that any of the provisions of Section 3 of this Act have been violated in the proceeding before the administrative agency, or that any of the findings of fact made by said agency and necessary to support its decision are unsupported by substantial evidence or clearly erroneous. If the determination of the administrative agency is not affirmed, it shall be reversed and the matter shall be remanded to the agency for further disposition in accordance with the decision of the court.

(5) *Stay.* The filing of the petition shall not stay the effectiveness or enforcement of the administrative agency's determination unless the court shall in its discretion so order, after hearing, upon such terms and conditions as the court may fix.

Section 5. The following sections of the Statutes are hereby repealed, and the provisions of this Act are in lieu thereof; provided, that such repeal shall not affect pending litigation: (Here enumerate all present provisions for statutory review which are to be superseded and repealed by the uniform act.)

Respectfully submitted,

RALPH M. HOYT, Chairman, Milwaukee, Wisconsin.
J. F. LOUGHBOROUGH, Little Rock, Arkansas.
MARVIN B. ROSENBERRY, Madison, Wisconsin.
JOHN B. SANBORN, St. Paul, Minnesota.
JULIUS C. SMITH, Greensboro, North Carolina.
E. BLYTHE STASON, Ann Arbor, Michigan.
ROBERT B. TUNSTALL, Cleveland, Ohio.

The first section of the report was printed in pamphlet form as part of the report of the Section of Judicial Administration for 1938. The second section has been mimeographed and a limited number of copies are available upon request to the Executive Secretary of the Association.

2. If it is deemed best to have certain administrative activities reviewed in a different court than the one selected for administrative cases in general, the exception may be stated by way of proviso at the close of the paragraph.

PROGRAM FOR SIXTY-SECOND ANNUAL MEETING

(*Continued from page* 468)

Section of Legal Education and Admissions to the Bar

FIRST SESSION
Veterans' Building
Tuesday, July 11, 2:00 P. M.

Report of Adviser.
Appointment of Nominating Committee.
Chairman's Address, R. G. Storey.
"The Product of Our Present Day Law School," Hon. Robert H. Jackson, The Solicitor General of the United States.
"The Sponsorship System under Law School Auspices," Professor William W. Dawson, of Western Reserve University.
"Why Cooperating Committees?" Dean Marion R. Kirkwood, of Stanford University.
Other speakers to be announced.
Election of officers and members of the Council.

SECOND SESSION
Veterans' Building
Wednesday, July 12, 2:00 P. M.

Joint Session of Section of Legal Education and Section of Bar Organization Activities.
SUBJECT: ADVANCED LEGAL EDUCATION
Report by W. E. Stanley, Chairman of Committe on Advanced Legal Education, of the Section of Legal Education.
"Institutes as Important Factors in Bar Organization," Burt J. Thompson, Forest City, Iowa.
"Institutes for Smaller Local Bars from Consumers' Point of View," William Kelly, President-Elect of The Colorado Bar Association.
"The Legal Institute as Seen from the Platform," Prof. E. Blythe Stason, Dean-Elect of the University of Michigan Law School.

Section of Mineral Law

Tuesday, July 11,
9:30 A. M.
Veterans' Building

Report of the Chairman.
Reports of Committees.
Reading of minutes and disposition of routine matters.
Address: "Sub-surface Trespassing," by Mortimer A. Kline, of the Los Angeles Bar.
Address: "Peculiarities and Lack of Standardization in California Oil and Gas Leases," by Robert M. Pease, of the Los Angeles, Bar.

2:00 P. M.
Veterans' Building

Addresses: "The Layman's Viewpoint on Conservation and Proration of Oil by Agreement," by A. C. Mattei, President of Honolulu Oil Company, of San Francisco, and J. Howard Marshall, of the San Francisco Bar.

Wednesday, July 12
2:00 P. M.
Veterans' Building

(Speakers and subjects to be announced later.)

Section of Municipal Law

Tuesday, July 11, 10:00 A. M.
Veterans' Building

"Greeting from the State of California," Hon. Earl Warren, Attorney General of California.
Address of Welcome, Hon. John J. O'Toole, City Attorney of San Francisco.
"The Reciprocal Taxation by the Federal and State Governments of Income Derived from Public Securities:
"Introductory Statement by Ambrose Fuller, for his Committee.
Address by John Philip Wenchel, Chief Counsel, Bureau of Internal Revenue.
In opposition, Henry Epstein, Solicitor General, State of New York, has consented to speak, if he is able to attend the meeting.
"Municipal Regulation of Outdoor Public Assembly," Grenville Clark, New York City.

Luncheon, 1:00 P. M.
Empire Hotel
(Speaker to be announced)

2:00 P. M.
Veterans' Building

Report of Committee on Municipal Tort Liability, Edwin M. Borchard, Yale University, or Leon Thomas David, Assistant Corporation Counsel of Los Angeles.
Federal Municipal Debt Readjustment Act:
Introductory Statement by John D. McCall, for the Committee.
Discussion of the experience of the Reconstruction Finance Corporation in the adjustment of debts under the act, by J. Bowers Campbell of Counsel to the Reconstruction Finance Corporation.

Section of Patent, Trademark and Copyright Law

Veterans' Building
Monday, July 10, 2:00 P. M.

Thomas E. Robertson, Chairman, presiding.
Announcements.
Report by Chairman.
Reports of Committees.
Appointment of Committee to Nominate Officers and Members of Council.

Tuesday, July 11, 9:30 A. M.

Announcements.
Reports of Committees (continued).

12:30 P. M.
Luncheon
(See announcement page 517, International Association for the Protection of Industrial Property.)

2:00 P. M.

Reports of Committees (continued).
Report of Nominating Committee and Election of Officers and Members of Council.
Unfinished business.
New Business.
Adjournment.

7:30 P. M.
Clift Hotel
Informal Dinner for Members, Ladies and Guests.

Section of Public Utility Law

Monday, July 10, 2:00 P. M.

Palace Hotel

Address of Welcome.

Address of Chairman of Section.

Report of Committee on Effect of the Decision of *Morgan v. United States* upon the Procedure of Administrative Tribunals, John P. Bullington, Esq., Houston, Texas, Chairman.

Address by Hon. Robert H. Jackson, Solicitor General of the United States.

Informal discussion of Report.

July 10, 7:30 P. M.

St. Francis Hotel—Dinner Dance.

Tuesday, July 11, 10:00 A. M.

JULY 11

Veterans' Building

Report of Standing Committee as to Developments During the Year in the Field of Public Utility Law, George D. Gibson, Richmond, Va., Chairman.

Address (Name of Speaker to be announced).

Report of Committee on the Application of Labor Laws to Public Utilities, William L. Ransom, New York City, Chairman.

Informal discussion of Reports.

Tuesday, July 11, 2:00 P. M.

Veterans' Building

Report of Committee on the Relation of Recent Federal Legislation to the Regulation of the Transportation and Distribution of Natural Gas, William A. Dougherty, New York City, Chairman.

Report of Committee on the Simplification of Holding Company Systems Under the Public Utility Holding Company Act, Hon. John J. Burns, Boston, Mass., Chairman.

Informal discussion of Reports.

Election of Officers.

Section of Real Property, Probate and Trust Law

Monday, July 10, 12:00 M.

Annual luncheon meeting of Council of Section.

2:00 P. M.

GENERAL MEETING OF SECTION

Veterans' Building

George E. Beers, Chairman, presiding.

Introductory Statement by Chairman.

Welcome.

Announcements.

Address: Hon. Thurman W. Arnold, Assistant Attorney General of the United States, in charge of Anti-Trust Division.

Statements by Directors of Divisions:

Real Property Law Division, Robert F. Bingham, Cleveland, Ohio, Vice-Chairman.

Probate Law Division, R. G. Patton, Minneapolis, Minn., Vice-Chairman.

Trust Law Division, Gilbert T. Stephenson, Wilmington, Delaware, Vice-Chairman.

Report by Secretary of Section, James E. Rhodes, 2d, Hartford, Conn.

Reports of Section Committees:

Relations with Kindred Organizations, James E. Rhodes, 2d, Hartford, Conn., Chairman.

Cooperation of State and Local Bar Associations, Mrs. Eleanor S. Burr, Boston, Mass., Chairman.

New Members for American Bar Association and Section, Carroll G. Patton, Minneapolis, Minn., Chairman.

Appointment of Nominating Committee.

Tuesday, July 11, 9:30 A. M.

REAL PROPERTY LAW DIVISION

Veterans' Building

First Session

Robert F. Bingham, Cleveland, Ohio, Vice-Chairman and Director of Division, presiding.

Statement by Director of Division.

"The Economic and Financial Implications of Mortgage Insurance as Provided in the National Housing Act," Ernest M. Fisher, Economic Adviser to the Federal Housing Administration.

"Developments under the National Housing Act in the Analysis of Mortgage Risks," Frederick M. Babcock, Chief Appraiser, Federal Housing Administration.

"Legal Aspects of the National Housing Act," Abner H. Ferguson, General Counsel, Federal Housing Administration.

PROBATE LAW DIVISION

Veterans' Building

First Session

R. G. Patton, Minneapolis, Minn., Vice-Chairman and Director of Division, presiding.

Statement by Director of Division.

Reports by Division Committees:

Conflicts of Probate Jurisdiction, Fred T. Hanson, McCook, Nebraska, Chairman.

Improvements in Probate Practice, Albert J. Delange, Houston, Texas, Chairman.

Uniformity in Probate Codes, William L. Eagleton, Peoria, Illinois, Chairman.

After each report there will be a conference on the reports and discussion from the floor.

TRUST LAW DIVISION

Veterans' Building

First Session

Gilbert T. Stephenson, Wilmington, Del., Vice-Chairman and Director of Division, presiding.

Statement by Director of Division.

"Progress in the Codification of Trust Law in the United States," John Minor Wisdom, New Orleans, Louisiana.

Comments—O. B. Thorgrimson, Seattle, Washington.

"Progress in the Codification of Trust Law in Other Common-Law Countries," W. H. Mowat, Vancouver, B. C.

Comments—Evan Haynes, Berkeley, California.

"Trends in the Development of Trust Law," Elmo H. Conley, Los Angeles, California.

"Current Trust Literature," Herbert H. Scheier, Chicago, Ill., Chairman.

"Pending Trust Legislation," Ralph H. Spotts, Los Angeles, California, Chairman.

Discussion.

2:00 P. M.

REAL PROPERTY LAW DIVISION

Veterans' Building

Second Session

Robert F. Bingham, Cleveland, Ohio, Vice-Chairman and Director of Division, presiding.

Discussion of Addresses of the Morning.

Committee Reports:

Changes in Substantive Real Property Principles, Henry Upson Sims, Birmingham, Alabama, Chairman.

Real Property Financing, Horace Russell, Chicago, Ill., Chairman.

Uniform Mortgage Act, Harold L. Reeve, Chicago, Ill., Chairman.

Improvements in Conveyancing Practice, Miss Margaret McGurnaghan, Topeka, Kans., Chairman.

Standards for Abstracts of Title, H. L. Douglass, Oklahoma City, Oklahoma, Chairman.

Standards for Title Opinions, Charles Martin Lyman, New Haven, Connecticut, Chairman.

Standards for Title Insurance, James E. Rhodes, 2d, Hartford, Connecticut, Chairman.

Standards for Certificates of Title under Torrens System, John de Laittre, Minneapolis, Minn., Chairman.

Improvement of Land Records, Edward D. Landels, San Francisco, California, Chairman.

Federal Tax Liens, Charles C. White, Cleveland, Ohio, Chairman.

Conveyancing in Compliance with Bankruptcy Act, Elmer M. Leesman, Chicago, Illinois, Chairman.

Joint Committee with American Society of Civil Engineers, Dorr Viele, Cambridge, Mass., Chairman; Philip Kissam, Princeton, New Jersey, Chairman of Engineers.

Building and Loan Financing, Henry P. Thomas, Alexandria, Virginia, Chairman.

After each report there will be discussion from the floor.

PROBATE LAW DIVISION

Veterans' Building

Second Session

R. G. Patton, Minneapolis, Minn., Vice-Chairman and Director of Division, presiding.

Reports by Division Committees:

Probate Administration of Testamentary Trusts, Francis N. Balch, Boston, Mass., Chairman.

State and Federal Taxes in Probate Practice, Charles Crail, Jr., Los Angeles, Calif., Chairman.

Guardianship Administration, William M. Winans, Brooklyn, N. Y., Chairman.

Probate Administration of Testamentary Trusts, Francis M. Balch, Boston, Mass., Chairman

Testamentary Draftsmanship, George W. Van Slyck, New York City, Chairman.

After each report there will be a conference on the report and discussion from the floor.

TRUST LAW DIVISION

Veterans' Building

Second Session

Gilbert T. Stephenson, Wilmington, Delaware, Vice-Chairman and Director of Division, presiding.

"Drafting Living Trust Agreements—Legal Aspects," Albert B. Ridgway, Portland, Oregon.

"Drafting Living Trust Agreements—Practical Aspects," Arthur F. Young, Cleveland, Ohio.

"Drafting Life Insurance Trust Agreements—From Point of View of Policy-Holder," Fred H. Schauer, Santa Barbara, Calif.

"Drafting Life Insurance Trust Agreements—From Point of View of Trustee," Dudley C. Monk, Pasadena, Calif.

"Drafting Life Insurance Trust Agreements—From Point of View of Life Insurance Company," Miss Lelia E. Thompson, Hartford, Conn.

Discussion.

"Trust Statutes and Decisions," Walter W. Land, New York City, Chairman.

7:00 P. M.

Palace Hotel

ANNUAL DINNER FOR MEMBERS, LADIES AND GUESTS —INFORMAL

George E. Beers, Chairman, presiding.

After-Dinner Address by speaker to be announced.

Frank J. Hogan, Greetings from the American Bar Association.

Thomas B. Gay, Greetings from the House of Delegates.

Wednesday, July 12, 2:00 P. M.

REAL PROPERTY LAW DIVISION

Veterans' Building

Third Session

Robert F. Bingham, Cleveland, Ohio, Vice-Chairman and Director of Division, presiding.

"Standardization of Title," Charles M. Lyman, New Haven, Conn.

"A State System of Plane Coordinates and Property Surveys—A Basic Method of Eliminating Boundary Difficulties," Professor Philip Kissam, School of Engineering, Princeton University. (With lantern slides.)

Discussion from floor.

Continuation of Discussion on Reports made at preceding meeting.

JOINT MEETING PROBATE AND TRUST LAW DIVISIONS

Veterans' Building

Third Session

William F. Bruell, Redfield, South Dakota, Vice-Chairman of Section, presiding.

"Drafting Wills," Paul Vallee, Los Angeles, California.

Comments—C. P. Burnett, Jr., Seattle, Washington.

General Discussion on Drafting Wills.

Thursday, July 13, 2:00 P. M.

GENERAL MEETING OF SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW

Veterans' Building

Final Session

George E. Beers, Chairman, presiding.

Reports of Division Meetings for Action:

Real Property Law Division, Robert F. Bingham, Director.

Probate Law Division, R. G. Patton, Director.

Trust Law Division, Gilbert T. Stephenson, Director.

Statement by Chairman of Section as to any action desired.

Address—"The Law of Irrigation; An Instance of American-Born Common Law," Hon. Orie L. Phillips, Judge of the Circuit Court of Appeals for the Tenth Circuit.

Report of Nominating Committee.

Elections.

Announcements.

Adjournment.

4:00 P. M.

Meeting of Council as constituted for 1939-1940.

National Conference of Commissioners on Uniform State Laws—Forty-Ninth Annual Meeting

St. Francis Hotel
July 3-8, 1939

Monday, July 3

The morning and also the evening will be devoted to meetings of Sections and Committees for the consideration of their work and their reports and the further consideration of their tentative drafts of Acts to be presented. It is expected that such meetings will be at 10:00 o'clock A. M., and 8:00 o'clock P. M., respectively, or as soon thereafter as possible.

2:00 P. M. FIRST SESSION

I. Address of Welcome.
II. Response.
III. Roll Call.
IV. Reading of Minutes of Last Annual Meeting.
V. Announcement of Appointment of Nominating Committee.
VI. Address of President, Alexander Armstrong.
VII. Report of Treasurer, Murray M. Shoemaker.
VIII. Report of Secretary, Barton H. Kuhns.
IX. Report of Executive Committee, William A. Schnader, Chairman.
X. Reports of Standing Committees:
1. Legislative, John P. Deering, *Chairman.*
2. Public Information, J. Purdon Wright, *Chairman.*
3. Appointment of and Attendance by Commissioners, Harrison A. Bronson, *Chairman.*
4. Style, E. E. Brossard, *Chairman.*

XI. Reports of General Committees:
1. Legislative Drafting, E. E. Brossard, *Chairman.*
2. Uniformity of Judicial Decisions, Donald E. Bridgman, *Chairman.*
3. Compacts and Agreements Between States, Joseph F. O'Connell, *Chairman.*

XII. Reports of Special Committees:
1. On Cooperation with the Council of State Governments and the American Legislators Association, Nathan William MacChesney, *Chairman.*
2. On Cooperation with the Interstate Commission on Crime, Robert S. Stevens, *Chairman.*

XIII. Reports of Sections:
1. Commercial Acts Section, Karl N. Llewellyn, *Chairman.*
2. Property Acts Section, George G. Bogert, *Chairman.*
3. Public Law Acts Section, John P. Deering, *Chairman.*
4. Social Welfare Acts Section, Sidney Clifford, *Chairman.*
5. Corporation Acts Section, Lewis Benson, *Chairman.*
6. Torts and Criminal Law Acts Section, Albert J. Harno, *Chairman.*
7. Civil Procedure Acts Section, Frank M. Clevenger, *Chairman.*

XIV. Reports of Section Committees and Special Committees assigned to Sections.

8:00 P. M.

Section and Committee Meetings.

Tuesday, July 4

9:30 A. M. SECOND SESSION

Deferred Section and Committee Reports.

Consideration of Uniform Act for Liquidation of Insurance Companies, E. Blythe Stason, *Chairman.*

Consideration of Uniform Act on Statutory Enactments, Terms and Clauses, Robert T. Barton, Jr., *Chairman.*

Wednesday, July 5

9:30 A. M. THIRD SESSION

Report of Nominating Committee and Election of Officers.

Consideration of Uniform Act on the Execution of Wills, Willard B. Luther, *Chairman.*

Consideration of Uniform Acknowledgment of Instruments Act, Mitchell Long, *Chairman.*

2:00 P. M. FOURTH SESSION

Consideration of Uniform Statute of Limitations Act, Jesse E. Marshall, *Chairman.*

Consideration of Uniform Act Fixing Basis of Participation by Secured Creditors in Insolvent Estates, Fred T. Hanson, *Chairman.*

Thursday, July 6

9:30 A. M. FIFTH SESSION

Consideration of Uniform Joint Tortfeasor Act, Albert J. Harno, *Chairman.*

Consideration of Uniform Real Estate Short Form Mortgage Act, William L. Eagleton, *Chairman.*

2:00 P. M. SIXTH SESSION

Consideration of Methods for More Speedy and General Passage of Uniform Acts.

8:00 P. M. SEVENTH SESSION

Consideration of Act Concerning the Release and Substitution of Sureties in Fiduciary Bonds and to Make Uniform the Law With Reference Thereto, Clarence E. Martin, *Chairman.*

Friday, July 7

9:30 A. M. EIGHTH SESSION

Consideration of Uniform Fair Trade Practices Act, Wiley B. Rutledge, *Chairman.*

Consideration of Real Estate Mortgage Act, William L. Eagleton, *Chairman.*

2:00 P. M. NINTH SESSION

Consideration of Uniform State Business Codes Act, Frank E. Horack, Jr., *Chairman.*

Consideration of Uniform Death in Common Disaster Act, Harry P. Lawther, *Chairman.*

4:30 P. M.

Memorials.

8:00 P. M. TENTH SESSION

Amendments to the Negotiable Instruments Act, Karl N. Llewellyn, *Chairman.*

Consideration of Uniform Bank Collection Act, Charles R. Hardin, *Chairman.*

Saturday, July 8

9:30 A. M. ELEVENTH SESSION

Consideration of Uniform Act on Survival of Tort Actions and Death by Wrongful Act, William M. Moss, *Chairman.*

Consideration of Deferred Uniform Acts.

2:00 P. M. TWELFTH SESSION

Consideration of Deferred Uniform Acts.

Consideration of First Tentative Drafts of Other Proposed New Uniform Acts.

Unfinished Business.

New Business.

Adjournment.

Other Organizations

CONFERENCE ON PERSONAL FINANCE LAW

Palace Hotel

Thirteenth Annual Meeting

Edmund Ruffin Beckwith, New York City, Chairman.

Tuesday, July 11, 6:30 P. M.

Subject for Discussion: "Enforcement of Law Governing Small Loans."

There will be papers on: "What the Bar Can Contribute to Effective Results," "Small Loans and Legal Aid Work," and "Activities of Enforcement Officials."

INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY
(American Group)

Tuesday, July 11—12:30 P. M.

Italian Room, Whitcomb Hotel

ANNUAL LUNCHEON MEETING

Business:

Reports by:

Fritz von Briesen on the 1944 Congress of the A. I. P. P. I. in the United States.

Hon. Thomas Ewing on Patent Law Revision.

Jo Bailey Brown on the work of the Patent Section of the American Bar Association.

Thomas H. West on Federal Legislation.

Edward S. Rogers on the New Trade-Mark Bill.

Dr. Stephen P. Ladas on the Copyright Law.

Election of Officers.

THE NATIONAL CONFERENCE OF BAR EXAMINERS

Tuesday, July 11, 9:30 A. M.

Veterans' Building

Address by the Chairman, A. G. C. Bierer, Jr., of Guthrie, Oklahoma.

"Bar Examination Subjects and the Law School Curriculum," Dean Paul Brosman of Tulane University College of Law.

"Making and Marking a Bar Examination," Shelden D. Elliott of the University of Southern California School of Law, former Secretary of the California Committee of Bar Examiners.

"What We are Entitled to Expect of Character and Fitness Committees," Robert T. McCracken, of Philadelphia County Board of Law Examiners, and President of Pennsylvania Bar Association.

Report of National Committee on Character and Fitness Examination, Karl A. McCormick of Buffalo, New York.

Discussion.

Thursday, July 13, 2:00 P. M.

Bar Examiners Clinic under the direction of the Committee of Bar Examiners of the State Bar of California.

MEETINGS OF LAW SCHOOL ALUMNI ASSOCIATIONS, LEGAL FRATERNITIES, SORORITIES AND OTHER ORGANIZATIONS

The following Law School Alumni Associations, Legal Fraternities, Sororities and other groups will hold breakfasts, luncheons and dinner meetings during the Annual Meeting of the American Bar Association in San Francisco. Tickets may be purchased and information secured at the General Headquarters of the Association.

University of California Law School Association, Luncheon, Tuesday, July 11, Palace Hotel, Herbert E. Hall, Chairman of Arrangements, 901 Crocker Building, San Francisco, California.

Columbia University Law School Alumni, Luncheon, Wednesday, July 12, Palace Hotel, Christopher M. Bradley, Chairman of Arrangements, Financial Center Building, San Francisco, California.

Delta Theta Phi Legal Fraternity, Luncheon, Thursday, July 13, Palace Hotel, D. W. Falconer, Chairman of Arrangements, Nevada Bank Building, San Francisco, California.

Legal Fraternity of Gamma Eta Gamma Alumni, Dinner, Wednesday, July 12, 7:00 P. M., Sir Francis Drake Hotel, John M. Hoffman, Chairman of Arrangements, 1429 Broadway, Oakland, California.

Georgtown University Law School Alumni, Luncheon, Friday, July 14, Palace Hotel, John D. Costello, Chairman of Arrangements, Crocker-First Nat'l Bank Bldg., San Francisco, California.

George Washington University Alumni, Luncheon, Thursday, July 13, Palace Hotel, William S. Graham, Chairman of Arrangements, 57 Post Street, San Francisco, California.

Harvard University Law School Alumni, Luncheon, Thursday, July 13, Palace Hotel, Hon. Alden Ames, Chairman of Arrangements, Superior Court, City Hall, San Francisco, California.

Hastings College of Law Alumni, Luncheon, Wednesday, July 12, Clift Hotel, Arthur M. Brouillet, Chairman of Arrangements, Humboldt Park Building, San Francisco, California.

University of Illinois Law School Alumni, Luncheon, Tuesday, July 11, Whitcomb Hotel, Albert J. Harno, Chairman of Arrangements, University of Illinois Law School, Urbana, Illinois.

Kappa Beta Pi Legal Sorority, Brunch, Tuesday, July 11, 11:30 A. M., Aquatic Park Casino, Lenore D. Underwood, in charge of arrangements, 114 Sansome Street, San Francisco, California.

University of Maryland Law School Alumni, Luncheon, Wednesday, July 12, Palace Hotel, Charles Ruzicka, Chairman of Arrangements, First National Bank Building, Baltimore, Maryland.

Northwestern University Law School Alumni, Luncheon, Thursday, July 13, Palace Hotel.

Phi Alpha Delta Law Fraternity, Luncheon, Wednesday, July 12, St. Francis Hotel, Frank M. Ludwick, Chairman of Arrangements, 333 Roosevelt Building, Los Angeles, California.

Phi Delta Delta Legal Fraternity, Breakfast, Wednesday, July 12, Palace Hotel, Helen Louise Crosby, in charge of arrangements, 908 Judah Street, San Francisco, California.

Stanford Law Society, Luncheon, Wednesday, July 12, Sir Francis Drake Hotel, Robert Littler, Chairman of Arrangements, 1 Montgomery Street, San Francisco, California.

The Texas Society, Luncheon, Tuesday, July 11, St. Francis Hotel, Harry P. Lawther, Chairman of

Arrangements, Tower Petroleum Building, Dallas, Texas.

University of Virginia Law School Alumni, Luncheon, Wednesday, July 12, Palace Hotel, T. M. Shackleford, Jr., Chairman of Arrangements, Tampa Theatre Building, Tampa, Florida.

Yale University Law School Alumni, Luncheon, Wednesday, July 12, Palace Hotel.

Last Call for Special Train Reservations

THE Transportation Committee advises there is still time to make your Special Train reservations if you have not already done so. However, you are urged to send in your requests at the earliest possible moment. As advised in earlier issues of the JOURNAL, A. B. A. Special Train booklets, explaining in detail the complete all-expense tour to and from the San Francisco Meeting, are available. These booklets may be had by applying to any member of the Transportation Committee, A. B. A. Headquarters, 1140 No. Dearborn Street, Chicago, or the Burlington Route, 179 W. Jackson Boulevard, Chicago.

A grand time and congenial crowd are assured. The Special Train, completely air-conditioned and supplemented with full length Club, Observation and inviting Dining Cars, will leave Chicago, Sunday, July 2, from the Union Depot. At several cities enroute other members will board the train before arrival at Rocky Mountain (Estes) Park. Here we break the train ride with a full day in the colorful Colorado Rockies.

Then, Sun Valley. We will literally "take over" the palatial Lodge for two and one-half days. A great program is awaiting you. A special Sports Committee, already appointed, from our group, promise a series of contests, ranging from golf to horseshoe pitching, and prize awards for the winners. Hayrack parties can be arranged, unless you'd rather do something else, like ice skating. There will be a new out of door ice rink this year.

Salt Lake City will be most interesting. Among other things we will have a special organ recital at the Mormon Tabernacle, but probably the unusual blasting at Bingham Mine will be the spectacular event of the day.

Lake Tahoe offers a soft lovely beauty. If you like pine forests and deep cool reflecting lakes, you'll thoroughly enjoy Lake Tahoe. A dinner dance here will further contribute to your pleasure.

We arrive in San Francisco on Sunday morning; a day in advance of the Convention proper, allowing ample time for all to become comfortably settled before the opening sessions. Because of the San Francisco Fair or Golden Gate International Exposition, we are not leaving San Francisco for the return trip until Saturday evening, July 15, the day after the Convention closes.

The return trip is also replete with interesting things to do and see. Our first stop on the Post-Convention journey is a visit to Crater Lake. Totally different from Lake Tahoe, Crater Lake, set in the cone of a long extinct volcano, is equally as captivating.

The following day we motor from Tacoma, Washington, to majestic Mount Rainier. Many of the group will stay overnight at the enchanting Paradise Inn to further enjoy the rugged snowy beauty of Mt. Rainier. Then, late the next afternoon they will motor to Seattle for dinner and dancing at the Olympic Hotel.

Others have expressed a preference to drive to Seattle after luncheon at Paradise Inn the first day, and spend that evening in Seattle. The next day they will take the steamer to Victoria, B. C., and return while the others are at Paradise Inn. All will join again at Seattle, Tuesday night (July 18), and depart together on the Special Train.

A great deal has been said and written about man made colossals, but nothing ever attempted has been as vast or as huge as the Grand Coulee Dam. We visit this dam, and as a matter of fact have luncheon in the large commissary hall. Three times the size of Boulder Dam, Grand Coulee really challenges the imagination.

Then, Glacier National Park; "Land of the Shining Mountains," the Blackfeet Indians call it. Glacier Park has many lofty and towering peaks; hundreds of glistening lakes. Our motor ride over Logan Pass, one of America's most spectacular highways, presents this fascinating ever-changing panorama as we drive to Many Glacier Hotel. You will like Glacier Park. Our second evening there will be brought to a close with a colorful Blackfeet Indian ceremonial.

Once more on the Special Train enroute East. Another day and evening to enjoy the congenial companionship of new acquaintances or old friends before our return to Chicago. We feel you will agree that the trip is most attractive. We are enroute one week between Chicago and San Francisco and one week returning from San Francisco to Chicago, and though a great deal is to be seen in that short period of time, it has been arranged so as to be comfortable and restful.

All members of the Association, their families and friends are invited to join the tour and arrangements should be completed promptly.

THE TRANSPORTATION COMMITTEE.

ALASKA AND HAWAII

Arrangements have been completed with the Alaska Steamship Company and the Matson Navigation Company for members of the Association and their families to take greater advantage of their trip to the Pacific Coast by continung the journey and seeing the beauties and wonders of the outlying possessions of the United States.

The party going to Hawaii will sail from San Francisco on the SS MATSONIA, at 5:00 P. M., Friday, July 14th, and those going to Alaska will sail from Seattle, Washington, on the SS BARANOF, at 9:00 A. M., Wednesday, July 19th.

Complete information as to rates, rooms, and other details, will be furnished upon request addressed to

THE TRANSPORTATION COMMITTEE,
1140 N. Dearborn St.,
Chicago Ill.

ARRANGEMENTS FOR ANNUAL MEETING, SAN FRANCISCO, CALIF., JULY 10-14, 1939

Headquarters—Palace Hotel

Hotel accommodations, all with bath, are available as follows:

	Single for 1 person	Double (dbl. bed) 2 persons	Twin Beds for 2 persons	Parlor Suites
Palace		(All space exhausted)		
Alex. Hamilton	3.50	6.00	7.00	
Bellevue		5.00	6.00	8– 10
Californian	3.50	5.00	6.00	
Canterbury	3.50– 4.00	5.00– 6.00	7.00	10
Clift			8.00– 9.00	20
Drake-Wiltshire		5.50	7.00	
ElCortez	3.50– 4.50	4.50– 5.50	6.00– 7.00	10– 15
Empire	5.00		8.00	15
Fairmont	4.00– 8.00	6.00–10.00	7.00– 12.00	20
Fielding	3.50	5.00	7.00	
Franciscan	2.50– 3.50	4.00– 5.00	6.00	
Gaylord	3.50	5.00	6.00	8– 9
Mark Hopkins	6.00– 7.00	8.00–12.00	8.00– 12.00	20– 25
Mark Twain	2.50– 4.00	4.00– 5.00	4.00	
Maurice	3.00– 4.00	5.50– 6.00	7.00	12
New Olympic	3.50– 4.00	5.00	6.00	10
Plaza		6.00	6.50	
St. Francis			11.00– 12.00	16– 30
Sir Francis Drake		8.00– 9.00		25– 30
Somerton	2.50	3.00– 3.50	3.50– 4.00	
Stewart	3.00– 4.00	4.50– 6.00	4.50– 6.00	7
Washington	3.50	5.00	6.00	
Western Women's Club (for women only)	3.50		5.00	
Whitcomb	4.50	6.00– 8.00	7.00– 9.00	10– 12

EXPLANATION OF TYPE OF ROOMS

A single room contains either a single or double bed to be occupied by *one person*. A double room contains a double bed to be occupied by *two persons*.

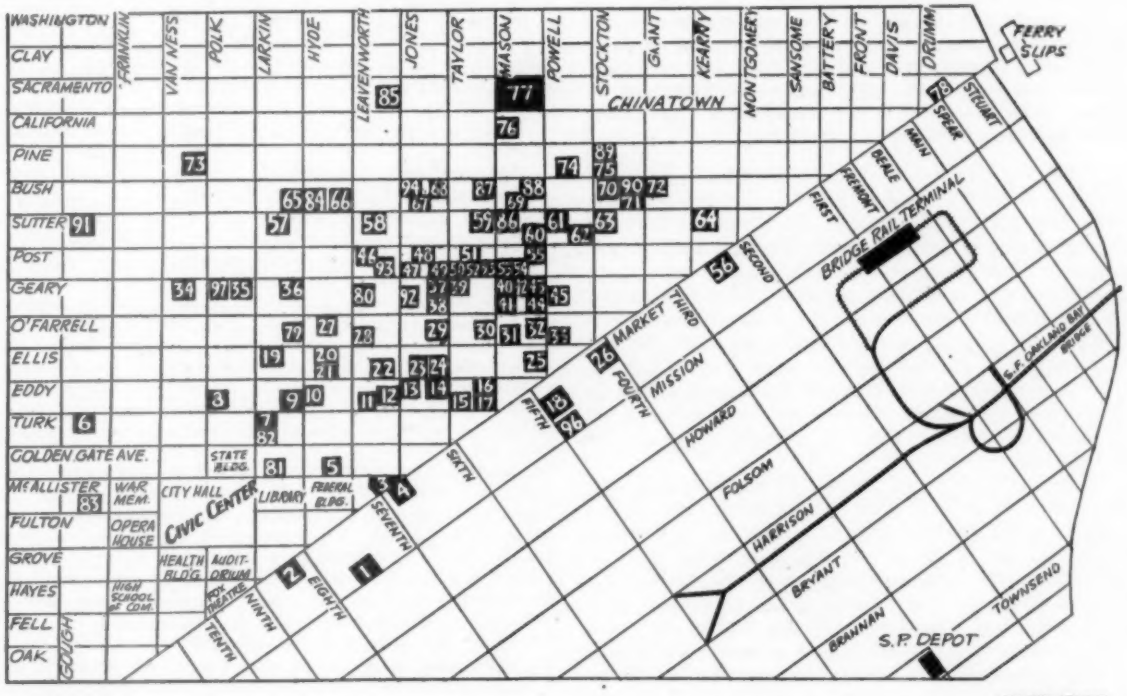
A twin-bed room contains two beds to be occupied by two persons. A twin-bed room will not be assigned for occupancy by one person.

A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with the parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservations, stating hotel desired, number of rooms required and rate therefor, names of persons who will occupy the same, ARRIVAL DATE AND DATE OF DEPARTURE, INCLUDING DEFINITE INFORMATION AS TO WHETHER SUCH ARRIVAL WILL BE IN THE MORNING OR EVENING.

Requests for reservations should be addressed to the Reservation Department, 1140 N. Dearborn Street, Chicago, Illinois.

MAP SHOWS LOCATION OF PRINCIPAL HOTELS



HOTELS

Alexander Hamilton	27	Colonial	74	Glen Royal	88	Maryland	80	Senate	7	Whitcomb	2
Ambassador	16	Commodore	98	Golden State	33	Maurice	48	Senator	20	Worth	48
Angelus	31	Court	70	Gotham	6	Mayflower	94	Shaw	3	Yuba	1
Arlington	28	Crane	43	Granada	65	New Olympic	23	Sir Francis Drake	91		
Baldwin	71	Davenport	92	Harvard	19	Ormond	21	Somerton	52		
Bellevue	37	Drake-Wiltshire	63	Herald	22	Oxford	17	Stewart	42		
Brayton	15	El Cortez	49	Herbert's	32	Padre	12	Stratford	45		
Broadmoor	91	Embassy	8	Keystone	28	Paisley	95	Sutter	64		
Californian	38	Empire	5	King George	40	Palace	86	Terminal	78		
Canterbury	67	Fairmont	77	Lafayette	10	Pickwick	62	Vanderbilt	30		
Carlton	57	Federal	4	Lankershim	19	Plaza	25	Victoria	75		
Cartwright	60	Fielding	83	La Salle	9	Powell	97	Virginia	41		
Cecil	51	Franciscan	54	Leland	73	President	24	Von Dorn	11		
Chancellor	60	Gartland	35	Lombard	34	Ritz	13	Washington	72		
Clark	14	Gaylord	47	Manx	44	Roosevelt	85	West'n Women's Club	90		
Clift	39	Geary	93	Mark Hopkins	76	St. Francis					
				Mark Twain	29	San Carlos					

MEETING PLACES

War Memorial—Veterans Building	A	
War Memorial—Opera House	B	
High School of Commerce	C	
City Hall	D	
Health Center Building	E	
State Building	F	
Exposition Auditorium	G	
Fox Theatre	H	
Library	I	

APARTMENTS

Pearsonia Apts.	79
Louard Apartments	80
Plaza Apartments	81
Congress Apartments	82
316 Fulton Street	83
Steinhart Apartments	84
Georgian Court Apts.	85
St. Francis Apartments	86
806 Bush Street	87
Kenilworth Apartments	88
840 Stockton	89
Court Apartments	90

REVIEW OF RECENT SUPREME COURT DECISIONS

Joint Resolution of June 5, 1933, Held to Cover Obligations Made Payable either in Gold Coin or in Foreign Money at Specified Rates of Exchange—Disposition of Fund Collected and Impounded Pending Determination of Validity of Rate Order of Secretary of Agriculture—Section 22 of Revenue Act of 1932, Including Compensation of Judges of United States Courts Taking Office after June 6, 1932, in "Gross Income" for Taxation, Held Constitutional—Amendment Postponing Date of Expiration of Temporary Act and Continuing It in Effect Is Equivalent to Expression of Intent of Congress That Act Continue in Full Force—and Prosecutions under Extended Act Do not Offend Prohibition against *Ex Post Facto Laws*—Priority of Debts Due United States—Appeals from Judgments of Three-Judge District Courts—National Firearms Act etc.

By Edgar Bronson Tolman*

Joint Resolution of June 5, 1933—Impairment of the Obligation of Contracts

Obligations made payable at the election of the holder either "in gold coin of the United States of or equal to the present weight and fineness" or in foreign money at specified rates of exchange, are within the provisions of the Joint Resolution of June 5, 1933, declaring that class of obligations to be against public policy and to be discharged by payment dollar for dollar in any money made legal tender for the payment of public or private debts.

Guaranty Trust Company v. Henwood, Trustee; Chemical Bank & Trust Company, Trustee, v. Henwood, Trustee, 83 Adv. Op. 815; 59 Sup. Ct. Rep. —.

Petitioners in the bankruptcy reorganization of the St. Louis Southwestern Railway Company owning or representing bonds of the face value of $21,638,000.00, asserted a right to be paid in the equivalent of Dutch guilders and asked that their claim based on the exchange value of guilders be allowed at $37,335,525.12.

The Court held that the Joint Resolution of June 5, 1933, made the bonds dischargeable by payment of the specified dollar value, in current legal tender United States money.

The mortgage securing the bonds provided that they should be paid in gold coin of the United States of the then standard weight and fineness or in English, Dutch, German or French money at specified rates of exchange. The bonds contained a substantially similar provision. Purchasers paid and the railroad company received in 1912 United States dollars and until 1936 interest was regularly paid in dollars. It was agreed in the briefs and on the argument that the terms of the bonds granted holders an option to elect payment in guilders and the question to be determined was stated to be as follows: "whether despite this option, the Joint Resolution operated to make the bond dischargeable in current United States legal tender, a dollar of legal tender to be repaid for every dollar borrowed." Mr. Justice Black delivered the opinion of the court. He said:

"Analysis of the terms of the Resolution discloses, first, that Congress declared certain types of contractual provisions against public policy in terms so broad as to include then existing contracts, as well as those thereafter to be made. In addition, future use of such proscribed provisions was expressly prohibited, whether actually contained in an obligation payable in money of the United States or separately 'made with respect thereto.' This proscription embraced 'every provision' purporting to give an obligee a right to require payment in (1) gold; (2) a particular kind of coin or currency of the United States; or (3) in an amount of United States money measured by gold or a particular kind of United States coin or currency.

"Having thus unmistakably stamped illegality upon both outstanding and future contractual provisions designed to require payment by debtors in a frozen money value rather than in a dollar of legal tender current at date of payment, Congress—apparently to obviate any possible misunderstanding as to the breadth of its objective—added, with studied precision, a catchall second sentence sweeping in 'every obligation,' existing or future, 'payable in money of the United States,' irrespective of 'whether or not any such provision is contained therein or made with respect thereto.' The obligations hit at by Congress were those 'payable in money of the United States.' All such obligations were declared dischargeable 'upon payment, dollar for dollar, in any coin or currency [of the United States] which at the time of payment is legal tender for public and private debts.' It results that if petitioners' claims rest upon 'obligation[s] . . . payable in money of the United States', by the terms of the Resolution they shall be discharged upon payment of current legal tender dollars equal to the number of dollars promised in gold or a particular kind of money. Decision must therefore turn upon the nature of the 'obligation[s] . . . incurred' by the railroad in its bond contracts of 1912."

The history of the transaction itself is set forth in the opinion with sufficient detail to furnish such aid to construction as the light of the circumstances afford and in the light of these circumstances the Joint Resolution is analyzed and construed.

"In their construction of the bonds, petitioners urge that each of the alternative promises to pay in a foreign currency is a separate and independent 'obligation' to pay. From this, they argue that the only 'obligation', for which enforcement is here sought is one 'payable' in guilders which must be treated as though it were an entirely separate and independent promise of the railroad. But the railroad undertook only a single obligation to repay

*Assisted by James L. Homire and Leland L. Tolman.

the money it borrowed. Repayment of that money might be called for in any one, but only one, of the five different types of money. This, however, did not divide the railroad's undertaking to repay into five separate and independent obligations to repay the same loan. Payment under the contract in any one of the currencies selected by the bondholder would discharge the entire single obligation of the debtor. Payment in guilders, after payment in guilders was elected, would nonetheless discharge an obligation which prior to such election and payment was an obligation also payable in United States dollars. The language of the Joint Resolution was intended to refer to a monetary obligation in its entirety. That which the Joint Resolution made dischargeable was the debt—the monetary obligation to pay. This debtor's obligation was a monetary obligation. The foreign currencies promised were not bartered for as commodities, but their function was that of money to be paid in countries in which they were legal tender and upon them interest was to be paid. Interest is not paid on commodities but on monetary obligations. And these promises in alternative currencies were not separate and independent contracts or obligations, but were parts of one and the same monetary obligation of the debtor."

Attention was called to the fact that when the Resolution went into effect no election had been made for the payment of the bonds in any of the alternative currencies and that the railroad was at that time still under obligation to pay dollars.

Reference is made to the report of the Senate Committee on the Resolution and from this a clear intent was deduced to make all coins and currencies of the United States legal tender for the payment of all debts, to close "legal loop holes" and to prevent "dislocation of the domestic economy" which would come from the payment of obligations in gold or foreign currencies at 169 cents on the dollar valuation, while receiving taxes and paying prices on the basis of $1.00 of that currency. The Court said:

"Here, the admitted purpose of the multiple currency provision supplementing the gold clause was the same as that of the gold clause itself, that is, to afford creditors of United States debtors on domestic money obligations contractual protection against possible depreciation of United States money. It was a plan, wholly legal when contrived, specifically designed to require debtors to pay 1912 gold dollars or fixed amounts in foreign currencies which were the exact equivalents of gold dollars in 1912. In purpose, pattern and, as shown here, in result, the multiple currency provision is identical with the practice Congress declared to be against public policy, and it furthers a mischief which the Resolution was enacted to end. . .

". . . A multiple currency provision was inserted in petitioners' bonds in order to tie this debtor to a fixed value of particular money, and, relying upon this provision, petitioners demand more dollars than promised in their bonds. The provision is thus clearly at cross purposes with the Resolution. By a simple mathematical calculation translating guilder value into dollar value, petitioners will, if the Resolution is not applied to them, enforce the obligations of this debtor, not dollar for dollar as the Resolution provides, but more than a dollar and a half for every dollar borrowed, and the purpose of Congress, that no such premium need be paid, will be completely defeated."

In answer to the argument that if the Resolution be construed to forbid enforcement of the option to demand payment in guilders, contractual rights would be nullified in violation of Fifth Amendment the opinion said:

". . . But, as has already been pointed out, the contracts on which the claims for guilders rest are domestic obligations, controlled by and to be interpreted under the law of the United States. And contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress. These bonds and their securing mortgage were created subject not only to the exercise by Congress of its constitutional power 'to coin money, regulate the value thereof, and of foreign coin,' but also to 'the full authority of the Congress in relation to the currency.'"

The judgments of the lower courts were therefore affirmed.

MR. JUSTICE STONE delivered a dissenting opinion in which the CHIEF JUSTICE, MR. JUSTICE MCREYNOLDS and MR. JUSTICE BUTLER concurred. Putting aside the question whether or not the bondholders had properly exercised their options, the first point of dissent was in regard to the construction of the Joint Resolution. On this point the dissenting opinion said:

"In each case the bonds contain alternative and mutually exclusive undertakings. The holder could if he wished demand payment in United States gold dollars of a fixed standard or their equivalent in United States currency. The alternative promise is for payment abroad of specified amounts of any one of several foreign currencies, without reference to their gold value at the time of payment. Its performance is as independent of gold or gold value as if it had called for the delivery of a specified amount of wheat, sugar or coffee, or the performance of specified services.

"Any construction of the gold clause resolution which would in the circumstances of the present case preclude payment in foreign money would equally forbid performance of an alternative promise calling for the delivery of a commodity or the rendition of services. Hence the decisive question is whether the resolution admits of a construction which would compel one whose contract stipulates for delivery at his option of a cargo of sugar to accept instead payment of a specified amount in legal tender dollars, merely because by the terms of his contract he might have demanded, though he did not, an equal number of gold dollars."

It will be observed that the prevailing opinion emphasizes the fact that the obligation was for the payment of specified sums of money while the dissenting opinion seems to regard the provision for payment in foreign money as standing in all respects as an election to pay by the delivery of commodities or service. In further support of that position the opinion says:

"The Joint Resolution of Congress and the committee reports make no mention of obligations dischargeable in foreign currencies or by delivery of commodities or performance of services. If it was the purpose of Congress to control such obligations through the exercise of its power to regulate the value of money, that fact must be discoverable from the language of the resolution or from some underlying public policy, to which its words and the records of Congress give no clue. Shortly before the adoption of the resolution, Congress had authorized the President to devalue the dollar. By appropriate legislation and executive action, gold payments by the Treasury had been suspended, the hoarding of gold and its exportation had been prohibited, and all persons had been required to deliver gold owned by them to the Treasury. . . It was obvious that these measures, aimed at the suppression of the use of gold as a standard of currency value, would fail of their purpose unless all payments in gold of the established standard or its equivalent were outlawed. The reports of the Congressional committees recommending the adoption of the resolution indicate clearly enough that such was its purpose. They give no hint that more was intended."

The dissenting opinion then framed its reply to the argument in the prevailing opinion that the obligation which the Joint Resolution defines as payable in money of the United States, includes the obligation

payable in guilders at a specified rate of exchange. On this point the Court said:

"The argument is not persuasive, both because it rests upon a strained and unnatural construction of the resolution and upon an assumption that there was a Congressional policy to strike down provisions for the alternative discharge of dollar obligations by payment in foreign currency not tied to gold, which finds no support in the language of the Joint Resolution or its legislative history. It seems fair to suppose that if Congress proposed to end all possibility of creating an international market for bonds payable in dollars or alternatively abroad in foreign currencies, both without gold value, it would have given some more explicit indication of that purpose than is exhibited by the Joint Resolution. Even if we assume that Congress would have struck down such alternative currency clauses had it considered the matter, we are not free to do what Congress might have done but did not, or what we may think it ought to have done to lessen the rigors of our own currency devaluation for those who had made contracts for payment abroad in foreign currency without gold value."

In *Bethlehem Steel Company v. Zurich General Accident & Liability Insurance Company, Limited,* No. 590, and *Bethlehem Steel Company v. Anglo-Continentale Treuhand,* No. 591, the same claim of the right to demand payment at the exchange value of foreign money was involved. The cases differed in two respects only. In these cases bonds were sold abroad and the present holders are foreign companies.

The court below held that the Resolution was not applicable to bonds so purchased and held. Delivering the opinion of the court MR. JUSTICE BLACK said:

"It is respondents' contention that their bonds represent a form of private international obligation, in no wise subject to the laws of the United States. However, they seek to enforce that obligation in this country and Congress has, as it constitutionally may, provided that multiple currency provisions of dollar obligations are against public policy here and, thus, unenforceable. . . . Courts in this country, State and Federal, can no longer enforce the contractual provisions which respondents have proceeded on, irrespective of their place of making.

"In the absence of any claim of international rights based upon the treaty provision of the Constitution, it is enough that respondents' bonds are 'obligations payable in the money of the United States,' as we have this day held.

"Under the governing principles announced in Nos. 384 and 495, the multiple currency provisions of respondents' bonds are within the operation of the Resolution, and their coupons are dischargeable dollar for dollar in current legal tender money of the United States."

The CHIEF JUSTICE and JUSTICES MCREYNOLDS, BUTLER and STONE dissented for reasons stated in the dissenting opinion of MR. JUSTICE STONE in the *Henwood* case, *supra.*

The *Guaranty Trust Co.* case was argued by Messrs. John W. Davis and Ralph M. Carson for petitioner and by Messrs. A. A. Kiskaddon, George L. Buland and Carleton S. Hadley for respondents. Reargued on April 26 by John W. Davis for petitioners and by above counsel for respondents. *The Chemical Bank and Trust Co.* case was argued, and later reargued, by Alfred H. Phillips for petitioner and Carleton S. Hadley for respondents.

Bethlehem Steel Co. v. Zurich General Accident Co. et al was argued, and later reargued, by Frederick H. Wood for petitioners and Messrs. Nathan L. Miller and Harry Hoffman for respondents.

Packers and Stockyards Act—Disposition of Fund Collected and Impounded Pending Determination of Validity of Rate Order

In a suit to set aside a rate order of the Secretary of Agriculture, as confiscatory, the district court required the impounding of the amounts by which the rates previously in force exceeded the amounts chargeable under the challenged order. Upon appeals, the Secretary's order was held invalid because in violation of the procedural requirements of due process, but the Supreme Court did not pass on the merits of the case but directed the District Court not to order disposition of the impounded funds until after the reasonableness of the rate has been determined in accordance with the procedural requirements of due process.

United States, et al. v. Morgan, et al. 83 Adv. Op. 779; 59 Sup. Ct. Rep. 795.

This appeal involved a question as to the disposition to be made of a fund paid into the district court in a suit to set aside an order of the Secretary of Agriculture reducing scheduled rates for services at the Kansas City stockyards. The fund is made up of the difference between the scheduled rates and those fixed by the Secretary's order of June 14, 1933. That order was set aside by the Supreme Court in *Morgan v. United States,* 304 U. S. 1, because of the failure of the Secretary to follow the statutory procedure. But that court has not passed upon the merits of the case.

In the suit to set aside the order, the district court entered a temporary restraining order, on condition that the appellees, who were attacking the order as confiscatory, should deposit in court the difference between the amounts chargeable under the scheduled rates previously in force and the amounts chargeable under the Secretary's order; a verified statement was also required of the appellees showing the names and addresses of all persons on whose behalf the amounts were collected.

After the Secretary's order had been held subject to attack for procedural defects, he directed that the "Proceedings, Findings of Fact, Conclusion and Order" of June 14, 1933, be served as his tentative findings and order, with an opportunity for the appellees to file exceptions and make oral argument on the exceptions. The appellants then moved the district court to stay proceedings there and to retain the impounded funds until the Secretary should make a final order. The appellees made a counter-motion that the fund should be distributed to them. The district court held that the fund should be distributed to the appellees, both because the secretary was without authority to prescribe charges effective as of June 14, 1933, and because it construed its own order to require distribution of the fund upon a determination by the Supreme Court that the order of June 14, 1933, was invalid.

On appeal the decree was reversed by the Supreme Court in an opinion by MR. JUSTICE STONE. He reviews the provisions of the Packers and Stockyards Act, and summarizes the argument of the appellees. He notes especially their argument that the Secretary is without power, in a proceeding on his own motion, as is the case here, to make any order for the payment of money. The Court rejects the appellees' position, however, and points out that there is no question here as to the Secretary's power to make an order for the payment of money, that the fund is in *custodia legis,* that the court and the administrative agency must take coordinated action to achieve the purpose of the Act, and that a court of equity should mould its remedy in a manner appropriate to accomplish that end.

The relationship between the court and the administrative agency is thus described in the opinion:

"There is here no question of the Secretary's making an order for the payment of money. The fund having been taken into custody of the court, in consequence of its order restraining the operation of the rate schedule prescribed by the Secretary, the questions for our decision are whether the district court, in the discharge of the duty which it has thus assumed as a court of equity, can rightly dispose of the fund without regard to the command of Section 305 if the Secretary shall determine that the rates exacted by aid of the court, and paid into its registry, are excessive; and whether, in the exercise of its discretion, the court should retain the fund until such time as the Secretary, proceeding with due expedition, shall make his final determination and order.

"In answering these questions there are two cardinal principles which must guide us to our conclusion. The one is that in construing a statute setting up an administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action. Neither body should repeat in this day the mistake made by the courts of law when equity was strugging for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim. The other guiding principle is that in reviewing the action of the Secretary and in similarly reviewing the action of the Interstate Commission in conformity with the provisions of the Urgent Deficiencies Act, the district court sits as a court of equity . . ; and in exerting its extraordinary powers to stay execution of a rate order, and in directing payment into court of so much of the rate as has been found administratively to be excessive, it assumes the duty of making disposition of the fund in conformity to equitable principles."

The opinion then discusses the effect of the provision that the Secretary, in a proceeding on his own motion, may not make an order for the payment of money. This provision is deemed not to be controlling in a case where the fund is in *custodia legis*, where the court is under an equitable duty to dispose of the same in accordance with law and justice. In exposition of this duty, MR. JUSTICE STONE states:

"Ordinarily, it is true, there would be no occasion for such an investigation if, as a result of it, the Secretary could make no reparation order. But, as we shall presently point out, when the alleged excessive rates are in *custodia legis*, the court has authority and is under an equitable duty to dispose of them according to law and justice. Thus the Secretary has the best of reasons to exercise his power to determine whether the rates were reasonable and may rightly do so, if his determination can afford a proper basis for the action of the district court in making disposition of the fund.

"The district court, in staying the Secretary's order and at the same time arresting the excess payments to appellees under the scheduled rates, assumed the duty of making the proper disposition of the fund upon the termination of the litigation. The duty was the more imperative here because the court's injunction order not only deprived the public of the benefit of the lower rates but obstructed any effective reparation order by the Secretary. Its action presupposed that the ownership of the excess payments was in doubt and could be finally determined only by an adjudication on the merits of the reasonableness of the filed rates. In taking the payments into custody it acted as a court of equity, charged both with the responsibility of protecting the fund and of disposing of it according to law, and free in the discharge of that duty to use broad discretion in the exercise of its powers in such manner as to avoid an unjust or unlawful result. It entered into no contract or understanding with the litigants; it entered into no undertaking as to the manner of disposing of the fund; its duty with respect to it is that prescribed by the applicable principles of law and equity for the protection of the litigants and the public, whose interests the injunction and the final disposition of the fund affect. . .

"It is familiar doctrine that the extent to which a court of equity may grant or withhold its aid, and the manner of moulding its remedies, may be affected by the public interest involved. . . Congress having by the Packers and Stockyards Act established the public policy of maintaining reasonable rates for stockyard services, and having prohibited and declared unlawful any unjust or unreasonable rate, a court of equity should be astute to avoid the use of its process to effectuate the collection of unlawful rates, and equally so to direct it to the restitution of rates which it has taken into its own custody, once they are shown to have been unlawful. If such a determination had already been made by the Secretary in the proceeding before him, after full hearing, and if it were found by the district court to be supported by evidence, the duty of the court to make restitution forthwith would seem evident, notwithstanding the absence of any order of the Secretary directing the payment. . . The Secretary, as we have seen, is authorized to make the determination. Section 305 denounces unreasonable rates as unlawful. The statute, as declared by Section 308 (b), saves to the court authority to give any remedy which in the present circumstances it might otherwise afford."

The opinion concludes as follows:

"It is a power 'inherent in every court of justice so long as it retains control of the subject matter and of the parties, to correct that which has been wrongfully done by virtue of its process.' . . What has been given or paid under the compulsion of a judgment the court will restore when its judgment has been set aside and justice requires restitution. . . And where by its injunction a court has compelled payment into its registry of amounts which may in pending proceedings be found not to have been due from those who paid them, we think justice equally requires the court to await the outcome of the proceedings in order that it may discharge the duty which it owes to the litigants and the public by avoiding unlawful disposition of the fund in the meantime, and ultimately distributing it to those found to be entitled to it. . .

"A proceeding is now pending before the Secretary in which, as we have seen, he is free to determine the reasonableness of the rates. His determination, if supported by evidence and made in a proceeding conducted in conformity with the statute and due process, will afford the appropriate basis for action in the district court in making distribution of the fund in its custody. . . Due regard for the discharge of the court's own responsibility to the litigants and to the public and the appropriate exercise of its discretion in such manner as to effectuate the policy of the Act and facilitate administration of the system which it has set up, require retention of the fund by the district court until such time as the Secretary, proceeding with due expedition, shall have entered a final order in the proceedings pending before him. . . The district court will thus avoid the risk of using its process as an instrument of injustice and, with the full record of the Secretary's proceedings before it, including findings supported by evidence, the court will have the appropriate basis for its action and will be able to make its order of distribution accordingly."

MR. JUSTICE BUTLER delivered a dissenting opinion in which he says:

"In proceedings instituted on complaint of shippers in 1922, the Secretary, July 27, 1923, approved a 15 per cent reduction of market agencies' charges. In May, 1932, the agencies filed tariffs, which were not challenged by

shippers or suspended by the Secretary, making additional reductions of about 10 per cent. These rates remained in force until November 1, 1937. Then there became effective a new schedule established by agreement between the agencies and the Secretary. There being no question as to reasonableness of charges made since that date, the appellees were not required to continue making deposits to secure their compliance with the Secretary's order of June 14, 1933 challenged in this suit, and so impounding ceased.

"The money on deposit in the district court is made up of amounts taken from charges as low as, or lower than, those so put and kept in force and applied until November 1, 1937. In the proceedings pending before him, the Secretary may not order reparation . . . and is without jurisdiction to do more than prescribe charges to be applied after the effective date of that order if one shall be made. The challenged order having been adjudged invalid because made in violation of the Act . . ., the appellees immediately became entitled to the money that, in pursuance of the restraining order, was deposited in court by them to secure their compliance with the Secretary's order if found valid. The record contains nothing to support the idea that the pledge was for any other purpose, or to justify or excuse withholding it for another use. For the reasons stated in its opinion, 24 F. Supp. 214, the district court rightly held appellees entitled to have their money returned to them. Its decree should be affirmed."

MR. JUSTICE MCREYNOLDS and MR. JUSTICE ROBERTS concurred with MR. JUSTICE BUTLER.

MR. JUSTICE REED took no part in the decision.

The case was argued by Solicitor General Jackson for appellants and by Frederick H. Wood for appellees. Reargued by same, John B. Gage also appearing for appellees.

Constitutional Law—Taxability of Compensation of Judges of United States Courts

Section 22 of the Revenue Act of 1932, re-enacted by Section 22 (a) of the Revenue Act of 1936, which includes the compensation of judges of courts of the United States taking office after June 6, 1932 in the "gross income" on the basis of which taxes are to be paid by them, does not violate Art. III, § 1 of the Constitution prohibiting diminution of the compensation of judges of the courts of the United States during their continuance in office.

George W. O'Malley, Individually and as Collector of Internal Revenue v. Joseph W. Woodrough and Ella B. Woodrough, 83 Adv. Op. —; 59 Sup. Ct. Rep. —.

This case involves the constitutionality of Section 22 of the Revenue Act of 1932, re-enacted by Section 22 (a) of the Revenue Act of 1936, insofar as it included in "the gross income," on the basis of which taxes were to be paid, the compensation of "judges of the courts of the United States, taking office after June 6, 1932."

Judge Woodrough was appointed to the United States circuit bench on April 12, 1933, and qualified on May 1, 1933. He filed a joint income tax return for himself and wife for the calendar year 1936, which disclosed his judicial salary of $12,500, but on the claim that it was constitutionally exempt from taxation he did not include it in "gross income." Subsequently a deficiency of $631.60 was assessed on the basis of that item, which, with interest, Judge Woodrough paid under protest. His claim for a refund was rejected, suit was brought and judgment went against the Collector. The case went to the Supreme Court under Section 2 of the Act of August 24, 1937, as a direct appeal from a judgment of a district court whose "decision was against the constitutionality of an Act of Congress."

MR. JUSTICE FRANKFURTER delivered the opinion of the Court, reversing the judgment below. He stated that while the assessment of the present tax was technically under the Act of 1936, that Act merely carried forward provisions of the Act of 1932, for the inclusion of compensation of "judges of courts of the United States taking office after June 6, 1932," which had been similarly incorporated in the Revenue Act of 1934. He continued:

"Therefore, the power of Congress to include Judge Woodrough's salary as a circuit judge in his 'gross income' must be judged on the basis of the validity of Section 22 of the Revenue Act of 1932, and not as though that power had been originally asserted by the Revenue Act of 1936. For it was the Act of June 6, 1932, that gave notice to all judges thereafter to be appointed, of the new Congressional policy to include the judicial salaries of such judges in the assessment of income taxes. The fact that Judge Woodrough before he became a circuit judge and prior to June 6, 1932, had been a district judge is wholly irrelevant to the matter in issue. The two offices have different statutory origins, are filled by separate nominations and confirmations, and enjoy different emoluments. A new appointee to a circuit court of appeals occupies a new office no less when he is taken from the district bench than when he is drawn from the bar."

Congress had sought, the opinion continues, by means of Section 22 of the Revenue Act of 1932, to avoid at least in part the consequences of *Evans v. Gore*, 253 U. S. 245. It makes this comment on that decision:

"That case, decided on June 1, 1920, ruled for the first time that a provision requiring the compensation received by the judges of the United States to be included in the 'gross income' from which the net income is to be computed, although merely part of a taxing measure of general, non-discriminatory application to all earners of incomes, is contrary to Article III, Section 1 of the Constitution which provides that the 'Compensation' of the 'Judges' 'shall not be diminished during their Continuance in Office.' See also the separate opinion of Mr. Justice Field in *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 586, 604 *et seq.* To be sure, in a letter to Secretary Chase, Chief Justice Taney expressed similar views. In doing so, he merely gave his extra-judicial opinion, asserting at the same time that the question could not be adjudicated. Chief Justice Taney's vigorous views were shared by Attorney General Hoar. Thereafter, both the Treasury Department and Congress acted upon this construction of the Constitution. However, the meaning which *Evans* v. *Gore* imputed to the history which explains Article III, Section 1 was contrary to the way in which it was read by other English-speaking courts. The decision met wide and steadily growing disfavor from legal scholarship and professional opinion. *Evans* v. *Gore* itself was rejected by most of the courts before whom the matter came after that decision."

Having regard to these circumstances, the question immediately before the Court was whether Congress exceeded its constitutional power in providing that United States judges appointed after the Revenue Act of 1932 should not enjoy immunity from the incidences of taxation to which everyone else within the defined classes of income was subjected. The opinion continues:

"Thereby, of course, Congress has committed itself to the position that a non-discriminatory tax laid generally on net income is not, when applied to the income of a federal judge, a diminution of his salary within the prohibition of Article III, Section 1 of the Constitution. To suggest that it makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experi-

ence on which the framers based the safeguards of Article III, Section 1. To subject them to a general tax is merely to recognize that judges are also citizens, and that their particular function in government does not generate an immunity from sharing with their fellow citizens the material burden of the government whose Constitution and laws they are charged with administering.

"After this case came here, Congress, by Section 3 of the Public Salary Tax Act of 1939, amended Section 22 (a) so as to make it applicable to 'judges of courts of the United States who took office on or before June 6, 1932.' That Section, however, is not now before us. But to the extent that what the Court now says is inconsistent with what was said in *Miles* v. *Graham*, 268 U. S. 501, the latter cannot survive."

MR. JUSTICE BUTLER delivered a dissenting opinion in which he quoted Hamilton, Story and Kent on the reasons for the provision of Article III, Section 1, of the Constitution prohibiting the diminution of the compensation of judges of the Supreme and inferior courts during continuance in office, reviewed judicial decisions involving the clause since 1803, and concluded as follows:

"In O'Donoghue v. United States (1933), 289 U. S. 516, we construed the Act of June 30, 1932 reducing the salaries of all judges 'except judges whose compensation may not, under the Constitution, be diminished during their continuance in office.' We there held that the supreme court and court of appeals of the District of Columbia were constitutional courts and therefore that the judges of those courts were excepted from the salary reduction. We cited the authorities, adopted the reasoning, and reaffirmed the conclusions on which rest the Court's judgments in *Evans* v. *Gore* and *Miles* v. *Graham*. And see *Booth* v. *United States*, 291 U. S. 339.

"Evidently the Court intends to destroy the decision in *Evans* v. *Gore*. Without suggesting that there is any distinction between that case and *Miles* v. *Graham*, it declares that the latter 'cannot survive.' But the decision of today fails to deal with, much less to detract from the reasoning of those cases. The opinion would imply that the letter of Chief Justice Taney to the Secretary of the Treasury, and the separate opinion of Mr. Justice Field in the *Pollock* case were treated as having weight as judicial decisions. But nowhere has that ever been suggested. However, all who are familiar with our judicial history know that entitled to great respect are the reasoned conclusions of these eminent American jurists as to the true intent and meaning of the Constitution of the United States. And similarly worthy of attention are the opinions of the Attorneys General and other public officials following the reasoning of Chief Justice Taney.

"Now the Court cites, as if entitled to prevail against those well-sustained opinions and the deliberate judgments of this Court, opposing views—if indeed upon examination they reasonably may be so deemed—of English speaking judges in foreign countries." . . .

"The suggestion that, as citizens, judges are not immune from taxation begs the question here presented. The Constitution itself puts judges in a separate class, declaring that at stated times they shall receive for their services compensation which 'shall not be diminished.' And so their salaries are distinguished from income of others. The immunity extends only to compensation for their services. No question of comparison or reasonableness is involved.

"Admittedly the Court now repudiates its earlier decisions upon the point here in issue. The provision defining tenure and providing for undiminishable compensation was adopted with unusual accord. There has been unanimity of opinion that, because in comparison with the legislative and executive the judicial department is weak, its independence is essential to our system of government. These safeguards go far to insure that independence. And, from the beginning, statesmen and jurists have agreed that the clause forbids diminution of judges' compensation by any form of legislation. The clause in question is plain: no exception is expressed, none may be implied. Its unqualified command should be given effect."

MR. JUSTICE MCREYNOLDS did not hear the argument and took no part in the decision.

The case was argued by Solicitor General Jackson for appellant and by Messrs. J. A. C. Kennedy and George L. DeLacy for appellees.

Criminal Law—Prosecution After Termination of a Temporary Act—Saving Clause and Equivalents Thereof

Congress alone may declare whether those who violate an Act may be prosecuted after its expiration. An amendment to such an act which merely postpones the date of its expiring and continues it in effect with all its substantive provisions unchanged is tantamount to an expression of the intent of Congress that the Act continues in full force and is the equivalent of a formal saving clause.

United States of America vs. Powers and Allred, 83 Adv. Op. 792; 59 Sup. Ct. Rep. 805.

Defendants were indicted for violation of the Connally (Hot Oil) Act of February 22, 1935, and for conspiracy to violate that act. The act contained a provision that it should "cease to be in effect on June 16, 1937." Before that date it was amended by striking out "June 16, 1937" and inserting in lieu thereof "June 30, 1939." The violations charged in the indictment filed September 17, 1938, were alleged to have been committed before June 16, 1937.

The district court sustained a demurrer and granted a motion to quash the indictment, holding that an indictment could not be returned after the date originally fixed for the termination of the temporary act. The Supreme Court, speaking by MR. JUSTICE DOUGLAS, held that the district court erred in so holding. The opinion declared:

"The Congress alone may declare whether those who, before June 16, 1937, violated the Act may be prosecuted thereafter. The question is one of the purpose of Congress. Explicit provisions in the amendment preserving the right of prosecution after the date originally set for expiry of the Act would have made that purpose clear beyond question. But the surrounding circumstances here make this purpose as clear and as unequivocal as an explicit provision."

"The Act is thus a self-sustained and organic whole, equipped to effectuate a declared policy of the Congress. By its original terms it would have expired June 16, 1937. But it never expired, for on June 14, 1937, the whole Act was continued in effect until June 30, 1939. Its substantive phases were not altered one whit or tittle; its sanctions were neither reduced nor increased. Precisely the same acts continue to be prohibited after the amendment as before. The amendment merely perpetuated the entire Act for another term."

From these circumstances it was concluded that because of the amendment the Act never ceased to be in effect; that there was but one act; that there was no evidence that Congress proposed to waive or pardon violations which occurred prior to June 16, 1937, but prosecuted after that date. It was further said:

"There is a secondary consideration which points to the same conclusion. If the appellees are right in their contention, a temporary act such as this one would lose, as a practical matter, some of its sanctions. Violations could occur with impunity months before its expiry, for in practice there frequently is an unavoidably substantial lag between violation and prosecution. The statute should not be so construed if another interpretation will make it effective."

The defendants had relied upon a statement by Chief Justice Marshall "that an offense against a temporary act cannot be punished after the expiration of the act, unless a particular provision be made by law for the purpose."

The conclusive answer to that point was that the Act of February 22, 1935, did not expire on June 16, 1937. In further refutation of that point, it was said:

"But even if we assume the validity of that statement, it seems to us clear that though the Act be treated as having expired or terminated on June 16, 1937, the result is the same. For in this case 'particular provision' has been made 'by law for the purpose' of extending the enforcement machinery with reference to prior criminal violations. The 'particular provision' was the amendment of June 14, 1937, extending the effective period of the Act."

* *

"If the amendment of June 14, 1937, had merely 'extended' the duration, or postponed the expiration, of section 10 of the Act dealing with criminal penalties, 'particular provision' for subsequent prosecutions would have been indubitably clear. The fact that all sections, including section 10, were extended makes it nonetheless plain. The whole, though larger than any of its parts, does not necessarily obscure their separate identities.

"In view of these various considerations, we hold that this prosecution does not offend the prohibition in Article I, §9, cl. 3 of the Constitution against *ex post facto* laws."

The case was argued by Charles A. Horsky for appellant and by John D. Cofer for appellees.

Bankruptcy—Priority of Debts Due the United States—Debt Assigned to United States After Filing of Bankruptcy Petition

The United States is not entitled to priority of its claim as a creditor of the estate of a bankrupt by virtue of Section 3466 of the Revised Statutes and Section 64 (b) (7) of the Bankruptcy Act, on a claim assigned to it by the Federal Housing Administration where the assignment took place after the filing of the petition in bankruptcy. The rights of creditors are fixed as of the filing of the petition in bankruptcy, both as against the bankrupt and among the creditors themselves.

United States vs. Marxen, 83 Adv. Op. 788; 59 Sup. Ct. Rep. 811.

This case came before the Court on a certification from the Circuit Court of Appeals (Ninth Circuit) for instructions in a pending cause.

It appeared that the Federal Housing Administrator issued insurance, under the National Housing Act, to the California Bank, August 10, 1934. That Bank, on January 2, 1936, under the protection of the insurance, made a loan to the Monterey Brewing Company, which paid the indebtedness in part, but defaulted as to part on February 2, 1937. It filed a petition in bankruptcy and was adjudicated bankrupt on April 5, 1937. Under the insurance contract the bank had to wait 60 days after default before making claim on the Administrator. The bank did not present its claim until July 3, 1937, and the Administrator paid the claim August 4, 1937, by draft on the Treasury of the United States, and assigned the note to the United States of America. The Administrator filed a claim on the note in the name of the United States of America.

The referee allowed it as a general claim only, and the District Court approved this. The Circuit Court certified a question to the Supreme Court to determine whether the United States, on the facts stated, was entitled to priority on the claim over other claims under section 3466 of the Revised Statutes, by reason of the provision of Section 64(b) (7) of the Bankruptcy Act. The Supreme Court, in an opinion by MR. JUSTICE REED, answers the question in the negative.

Section 64(b) (7) confers priority upon "debts owing to any person who by the laws of . . . the United States is entitled to priority: *Provided*, that the term 'person' . . . shall include . . . the United States . . ." Section 3466 of the Revised Statutes provides that "whenever any person indebted to the United States is insolvent . . . the debts due to the United States shall be first satisfied; and the priority hereby established shall extend . . . to cases in which an act of bankruptcy is committed."

In dealing with the certificate, the Court first examines the question whether the government had a provable claim at the time of the filing of the bankruptcy petition, by reason of any agreement by the obligors to indemnify the Government for any loss it might sustain by reason of its insurance to the bank. The conclusion is reached that there was no privity shown to exist between the maker of the note and the Government, and that the Government's claim rests on the note itself as assigned.

The Court, on the principal question, concludes that Section 3466 does not apply to a general claim assigned to the United States after the filing of the bankruptcy petition. Discussing the basis for this conclusion, MR. JUSTICE REED says:

"The claim on the note, assigned to the United States subsequently to the maker's bankruptcy, has priority, if at all, by virtue of the general provisions of Section 3466, as recognized by Section 64(b) (7) of the Bankruptcy Act. That subdivision granted priority ahead of dividends to creditors, to claims entitled to priority under the laws of the United States. Priority has been secured to the United States in varying language throughout its history. The tendency has been to interpret these provisions liberally to secure the advantage sought by the Congress. 'As this statute has reference to the public good it ought to be liberally construed.' It has been said that 'nothing else appearing' even claims under the railroad Federal Control Act would be entitled to priority. But this principle of construction is subject to the limitation that the generality of the language of the section is restricted by the purpose to grant priority to the United States, only, and by legislative intention, as shown by other statutes. Consequently priority was refused to corporations wholly owned by the United States and to the Director General of Railroads because Section 10 of the Federal Control Act manifested an intention that the carriers under federal control should be treated as before their transfer to federal operation. The United States itself when it sought priority for its loans under the Transportation Act was denied the benefits of Section 3466 because the intention to build up the credit standing of the railroads was inconsistent with the claimed priority.

"We are of the view that Section 3466 is inapplicable to general claims in bankruptcy transferred to the United States, or to which it has become subrogated on payment, after the filing of the petition for the reason that the rights of creditors are fixed by the Bankruptcy Act as of the filing of the petition in bankruptcy. This is true both as to the bankrupt and among themselves. The assets at that time are segregated for the benefit of creditors. The transfer of the assets to some one for application to 'the debts of the insolvent, as the rights and priorities of creditors may be made to appear,' takes place as of that time.

"The question certified should therefore be answered in the negative."

THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS took no part in the case.

The case was argued by Assistant Attorney General Whitaker for the Government, and by Mr. Clarence Hansen for the appellee.

Federal Procedure—Appeals from Judgments of District Courts of Three Judges—Federal Statutes

Section 238 Judicial Code authorizes appeals only in those cases which require the convening of a district court of three judges under Section 266 Judicial Code. Section 266 is confined to suits involving a statute of general application and does not embrace those affecting a particular municipality or district. The Florida Statutes here involved purported to regulate the financial affairs of the Everglades District and were not statutes of general application.

H. C. Rorick, Joseph R. Grundy and J. R. Easton vs. Board of Commissioners of Everglades Drainage District, et al., 83 Adv. Op. 800; 59 Sup. Ct. Rep. 808.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court and as to the facts said:

"The record is singularly obscure."

The jurisdictional problem only was dealt with and this review will be confined to that question.

In 1850 Congress granted to Florida lands known as the Everglades and Florida undertook to apply the lands and the proceeds derived from them to drainage and reclamation purposes. In fulfillment of that obligation, Florida passed, in 1855, an Act vesting the lands in trustees consisting of designated state officials and prescribing how its financial affairs should be administered. Several times thereafter, the State, by legislation, altered the financial relations between the District and the Trustees, and in 1929, 1931 and 1937 made changes which affected the rates of taxes, the disposition of their proceeds, the procedure in cases of tax delinquency, and the authorization of bond issues.

Appellants were holders of bonds issued before these letter statutes and claim that the statutes impaired the obligations of the contracts beween bondholders and the State by reducing the income of the District and diminishing payments for interest and on account of principal. The jurisdictional question was whether the statutes to enjoin the enforcement of acts which affected the Everglades were state statutes of general application.

Section 266 of the Judicial Code restricts the class of cases to be heard by a three-judge court to those which involve statutes of general application. The court held that because of the nature of the case it was not one which required the convening of a court of three judges and that, therefore, it was not appealable under Section 238. Although the time for appeal to the Circuit Court of Appeals had expired, the Court did not terminate the litigation by an order of dismissal but ordered the decree vacated and the case remanded to the district court for further proceedings to be taken independently of Section 266.

The case was argued by William Roberts for appellants and by Clarence G. Ashby for the Board of Commissioners, and by Tyrus A. Norwood and Marvin C. McIntosh for trustees of Internal Improvement Fund, appellees.

Summaries

National Firearms Act—Constitutional Validitv

United States vs. Miller et al., 83 Adv. Op. 795; 59 Sup. Ct. Rep. 816. (No. 696, decided May 15, 1939).

Appeal from the United States District Court, Western District of Arkansas, to determine the constitutional validity of the National Firearms Act. That Act imposes a transfer tax of $200 for each firearm, of the character described in the Act, to be paid by the transferor, and to be represented by appropriate stamps to be provided by the Commissioner. It also makes it unlawful to transport firearms of the kind described, except in pursuance of a written order issued by the Commissioner, and requires the registration of firearms by the persons in possession thereof. Transportation of firearms in interstate commerce is likewise made unlawful, unless the requirements of the Act are complied with.

Appellees were charged with felonious transportation of a firearm, in interstate commerce, in violation of the Act. They demurred to the indictment as unconstitutional, because not a revenue measure but an attempt to usurp the police power reserved to the States. They also asserted that the Act offends the inhibition of the Second Amendment to the Constitution, that "A well regulated Militia, being necessary to the security of a free State, the right of people to keep and bear arms, shall not be infringed."

The district court sustained the demurrer holding that Section 11 of the Act violates the Second Amendment. But on appeal its judgment was reversed by the Supreme Court in an opinion by MR. JUSTICE MCREYNOLDS.

He points out that the contention based upon the asserted usurpation of police power is plainly untenable under the decisions dealing with the Harrison Narcotic Act.

The opinion also rejects the contention based on the Second Amendment, for the reason that, in the absence of a showing that possession or use of a firearm covered by the indictment (a shotgun having a barrel of less than 18 inches in length) has some reasonable relationship to the preservation of a well regulated militia, it cannot be said that the Second Amendment guarantees the right to keep such a weapon.

Various acts of the States dealing with the raising and equipping of a militia are cited, but are found to afford no support for the appellees' contention.

The case was argued by Mr. Gordon Dean for the Government.

Federal Alcohol Control Act—Constitutionality—Appeal to Challenge Validity of Administrative Regulations

William Jameson & Co. v. Morgenthau, Jr., et al., 83 Adv. Op. 803; 59 Sup. Ct. Rep. 804, No. 717, (decided May 15, 1939).

Appeal from the District Court for the District of Columbia, challenging the constitutionality of the Federal Alcohol Administration Act, and contending that certain regulations promulgated thereunder are void as against the appellant and are without warrant of statutory authority.

The Court, in a *per curiam* opinion, dismissed the appeal on the ground that there was no substantial question presented as to the validity of the Act itself, and that as to the questions raised regarding the administrative regulations the federal statutes do not authorize a direct appeal to the Supreme Court from a federal district court. In this connection a difference in the text of the Act of August 24, 1937, is noted, in contrast with the language of Section 266 of the Judicial Code, which permits a direct appeal from a district court of three judges where an injunction is sought to restrain enforcement "of any statute of a state," or "of an order made by an administrative board or commission acting under and pursuant to the statutes of such states," upon the ground of unconstitutionality. The Act of August 24, 1937, governing an appeal such

as that involved here, confines direct appeals to cases of attack upon an "Act of Congress," upon the ground that "such Act or any part thereof is repugnant to the Constitution. . . ."

The cause was remanded to the district court for further proceedings.

The case was argued by Mr. William D. Mitchell for the appellant, and by Solicitor General Jackson and Philip E. Buck for the Government.

District Courts — Provisional Remedies — Attachment and Garnishment—Jurisdiction in Rem

Rorick v. Devon Syndicate, Ltd., 83 Adv. Op. —; 59 Sup. Ct. Rep. —. (No. 676, Decided May 22, 1939).

Certiorari to determine whether a Federal District Court in Ohio, in the absence of jurisdiction *in personam* and after removal of the action from the Ohio State Court where jurisdiction *in rem* over certain property of the defendant has already been acquired, can issue an order of attachment or garnishment against other property of the same defendant.

The Court's opinion by MR. JUSTICE DOUGLAS, before answering this principal question, examines and rejects the contention that the attachment and garnishment which had been obtained in the State Court under State Law prior to removal were void because the affidavits upon which they were obtained were taken before a notary public who was disqualified under the Ohio Practice. The opinion also discusses the preliminary question whether the garnishments obtained in the State Court were premature and void because they were obtained without personal service and prior to the first publication of notice of constructive service and concludes that, under the Ohio Statutes, personal service or first publication were not necessary preliminaries to the attachments or garnishments, and that these liens having been obtained in the state court prior to removal are, therefore, preserved intact after removal.

The opinion then comes to the main issue in the case relating to the power of the District Court to issue an order of attachment after removal if jurisdiction *in rem* has been obtained prior thereto. It examines, criticizes and distinguishes prior Supreme Court authorities on this question, particularly *Toland v. Sprague,* 12 Pet. 300, and *Big Vein Coal Company of West Virginia v. Read,* 229 U. S. 646, and concludes in the light of Revised Statutes §§ 646, 739 and 915 that, where jurisdiction *in rem* has been obtained in the state court under state law, plaintiff may obtain in the Federal court after removal such orders of attachment or garnishment as would have been available to him in the state court, by extending the *in rem* proceedings completed prior to removal so that they will include other property of the same defendant, even though jurisdiction *in personam* has not been obtained in either court.

The case was argued on April 24, 1939 by Mr. George R. Effler for the petitioner and by Mr. George D. Welles for the respondent.

Statutes—Forfeitures—Liquor Law Violations—Finance Companies

United States v. One 1936 *Model Ford V-8 DeLuxe Coach,* and *United States of America v. Automobile Financing, Inc.* 83 Adv. Op. —; 59 Sup. Ct. Rep. —. (Nos. 10 and 627, decided May 22, 1939).

Certiorari involving the interpretation of Section 204 of the Liquor Law Repeal and Enforcement Act of August 27, 1935, which confers upon the court which has decreed forfeiture of a vehicle for violation of the internal revenue laws relating to liquors, exclusive jurisdiction to remit or mitigate the forfeiture if the claimant shows (1) that he has an interest in the vehicle which he acquired in good faith, (2) that at no time he had any knowledge or reason to believe the vehicle was being or would be used to violate Federal or state liquor laws and (3) "if it appear that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that before such claimant acquired his interest or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police .... that such other person had no such record or reputation."

The question for decision was whether an automobile finance company claiming mitigation of forfeiture of an automobile seized for unlawful transportation of liquor upon which federal tax had not been paid, is entitled to the benefits of the statute in the absence of a showing that it had investigated to determine whether the purchaser was in reality only a straw purchaser for a bootlegger. Here the credit company had investigated the character and credit of the named purchaser, but had made no inquiry as to the possibility that he was acting as agent for another. The dealer from whom the car was purchased knew of the agency but did not inform the finance company of it.

The Court's opinion by MR. JUSTICE MCREYNOLDS holds that Congress did not intend to require that one dealing in good faith must, at his peril, first discover and then make inquiry concerning some one of whose existence he has no knowledge or suspicion. It reviews the history of the legislation in detail and points out the difficulties that would arise from a more strict construction of the statutory language and it concludes that under the circumstances the finance company had made sufficient inquiry to be entitled to the benefits of the statute. MR. JUSTICE DOUGLAS dissented in an opinion in which MR. JUSTICE FRANKFURTER and MR. JUSTICE BLACK joined. The dissent construes the statute to require that a claimant must prove that he made a reasonable investigation to ascertain if the purchaser was a mere straw man acting for another, and points out that under the ordinary business relationship between dealers and credit companies a reasonable investigation which would have disclosed the true situation would not place too heavy a burden upon the finance company.

MR. JUSTICE BUTLER and MR. JUSTICE STONE did not participate.

The first mentioned case was argued on October 12, 1938 and May 1, 1939 by Mr. Gordon Dean for the petitioner and by Messrs. Eugene E. Heaton and Mr. Duane R. Dills for the respondent.

Eighty-seven Years Young

The following tribute to The Honorable William Renwick Riddell, Senior Puisne Justice, Court of Appeals, Ontario, Canada, was paid by an officer of the Court on the occasion of the Justice's eighty-seventh birthday:

"The Psalmist says three score and ten
Is span of life for mortal men;
But when one reaches eighty-seven,
He surely must be blessed by Heaven;
And when such man is keen of mind,
A genial soul and wondrous kind
We all with one accord do pray
For many returns of natal day."

REPORTS OF SECTIONS AND COMMITTEES

BY action of the Board of Governors, the reports of Sections and Association Committees which do not contain recommendations requiring the action of the San Francisco meeting will be summarized in the JOURNAL, *with appropriate excerpts from the reports where warranted. The Advance Program pamphlet to be mailed to all members of the Association early in June will contain the Section and Committee reports which make recommendations to be voted on at the Annual Meeting, and thus will enable Association members to give their attention to the matters upon which action will be taken in San Francisco. The informative reports which do not contain recommendations for action will be summarized in the June and July issues of the* JOURNAL, *will be printed in full in pamphlet form for the San Francisco meeting, and will be sent to all Association members in the 1939 Annual Report Volume, which will be printed and distributed as soon as practicable after the adjournment of the Annual Meeting.*

The first installment of these summaries and excerpts is given as follows:

Committee On the Bill of Rights

The activities of this new Committee during its first year are shown to have fallen under three main heads:

"(a) Consideration of alleged violations of civil rights guaranteed by the Federal Constitution or State Constitutions.

"(b) The encouragement of the formation of committees in the field of civil rights by State Bar Associations and State Bars and by local Bar Associations.

"(c) Participation as *amicus curiae* in two litigations involving important issues of civil liberty."

Announcement of the creation of the Committee "was followed by the receipt by the Committee of a number of written and oral complaints setting forth alleged violations of rights secured by the Federal or State Constitutions. All these complaints were studied and answered. It became early apparent, however, that a central Committee of this character, could not deal adequately with the considerable number of alleged violations put before it. This was especially clear in view of the fact that the forming of a correct judgment concerning most of such cases would involve local investigations of fact and law. Moreover, it was apparent that there are in a number of States and in many cities problems concerning the maintenance of civil rights that in their nature are more of a local than a National character."

In consequence, the State and larger local Bar Associations were asked to organize similar committees. Up to April 26, 1939, some 48 Committees of this character have been appointed or authorized. Of these 26 are State Bar Association or State Bar Committees, and 22 are Committees of large local Bar Associations. The nation-wide interest in the subject is reflected by the fact that the State Bar Association or State Bar Committees so appointed or authorized are those of Colorado, Connecticut, District of Columbia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New York, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington and Wyoming. The local committees so appointed or authorized are those of the following Associations: Allegheny County (Pittsburgh) Atlanta, Baltimore City, Birmingham, Chicago, Cincinnati, Cleveland, Dallas, Erie County (Buffalo) Houston, Indianapolis, Kansas City, Los Angeles, (two committees, the Bar Association and the Lawyers Club), New York (two committees, the Association of the Bar and the New York County Lawyers Association), New Orleans, Philadelphia, Ramsey County (St. Paul), San Antonio, San Francisco, and Seattle.

The report states that in some instances, such committees have already been active in dealing with particular cases or situations, such as proposed regulations or legislation which would violate the spirit or letter of our constitutional guarantees. The Committee believes that the active development of the work of these State and local committees will be of benefit in safeguarding American civil rights."

After commenting upon the organization of the Committee's work, the report reviews the history of its intervention in the "Hague case" in New Jersey, and concludes its discussion of it by saying:

"The intervention of the Committee in this case produced considerable comment in the public press, which, so far as known, was unanimously favorable. In numerous editorial comments, both from newspapers usually deemed 'conservative' and others usually deemed 'liberal' or 'radical' the Association was commended for being willing to stand upon constitutional principles irrespective of probable disagreement by most members of the Association with the views and policies of the parties whose position was upheld on the constitutional issue. While some difference of opinion on the part of members of the Association as to the advisability of participating in this Hague case has been shown, many favorable comments have been made by members from all parts of the country."

The report announces that on April 1, 1939, the Committee filed a "Memoradum in Support of Jurisdiction" in the case of *Johnson, et al.* v. *Town of Deerfield, et al.*, in the Supreme Court of the United States, such action being taken with the approval of the President of the Association, and upon the consent of counsel for the parties. This case involved the validity of the compulsory flag salute and pledge under the laws of Massachusetts as applied to children who asserted a religious scruple against complying with the requirement in accordance with the tenets of a sect to which they belonged. The decisions of several State Courts of last resort had upheld the validity of similar statutes, but conflicting opinions in respect of constitutionality had been rendered by two Federal Districts Courts. The Supreme Court had, in *per curiam* rulings, dismissed two previous appeals from State Courts in similar cases, for want of a substantial Federal question, without further assignment of reasons; and these dismissals had been given different significance in lower Courts. Be-

lieving that the *Deerfield* case (and a California case that was submitted simultaneously to the Supreme Court) involved fundamental issues of civil rights which it was desirable to have clarified by the highest tribunal, the Committee, in its memorandum, without arguing the merits, set forth reasons why it was believed that the issues had not been foreclosed by previous decisions of the Supreme Court and why, notwithstanding the previous dismissals, it seemed desirable that the constitutional issues should be passed upon and clarified. Eleven of the Committee's twelve members joined in this memorandum, which made it clear that the memorandum was confined to the question of jurisdiction and did not represent any effort to deal with the merits. On April 17, 1939, the Supreme Court, citing the previous dismissals, declined jurisdiction.

The 1939 report of the Committee on the Bill of Rights concludes with "general observations" which merit the consideration of every member of the Association:

"In our interim report to the House of Delegates of January 8, 1939, we stressed the point 'that the work of a committee of this character is likely even to involve the maintenance of constitutional rights in cases of unpopular sentiments or persons.' The reason is well-stated in a pamphlet of Edward Beecher on the 'Alton Riots' in 1838 as follows: 'We are more especially called upon to maintain the principles of free discussion in cases of unpopular sentiments or persons, as in no other case will any effort to maintain them be needed.' Further experience confirms the correctness of this observation. As we said in our interim report: 'It is clear that the Bar must be prepared in undertaking work of this nature to draw sharply the distinction between any question of the approval or disapproval of sentiments or persons and the wholly different question of vindicating the constitutional right to utter unpopular sentiments and the right of unpopular persons to be safeguarded in their constitutional liberties.'

"The work of this Committee, being a new departure, has necessarily been experimental during the first year. Our experience has convinced us that if carefully and wisely conducted, the work in this field can be of great benefit to the general public, as well as to the organized Bar. In the troubled times that probably lie ahead, one of the most vital problems, if not the most vital of all, will be to meet our difficulties and emergencies, whether domestic or foreign and whether in peace or war, without sacrificing the basic values of American life and the basic constitutional rights guaranteed by our State and Federal Constitutions. We believe that this can be done; but we also believe that it can only be accomplished by constant and devoted vigilance. In this task, we believe that the organized Bar can and will play a major part,—provided the Bar is conscious of its function in this respect and organizes itself to these ends with reasonable effectiveness."

The members of the 1939 Committee on the Bill of Rights are Grenville Clark, of New York, Chairman; Douglas Arant, of Alabama; Zechariah Chaffee, Jr., of Rhode Island; Osmer C. Fitts, of Vermont; Lloyd K. Garrison, of Wisconsin; George I. Haight, of Illinois; Monte M. Lemann, of Louisiana; Ross L. Malone, Jr., of New Mexico; Burton W. Musser, of Utah; John Francis Neylan, of California; Joseph A. Padway, of Wisconsin and the District of Columbia; and Charles P. Taft, 2nd, of Ohio.

Report of the Standing Committee on Professional Ethics and Grievances

The Committee reports the work done at the four meetings already held during this Association year. The Committee has recommended the expulsion of one member of the Association since its last report, viz., *John L. Lotsch*, of New York City, for soliciting and accepting a bribe in connection with a report as Special Master.

In four other cases, private reprimands of members have been recommended.

Concerning the facts that the great volume of the complaints received by the Committee are not against members of the Association and that the reference of such matters to State and local Bar Associations too infrequently results in inaction, the report says:

"The volume of complaints of professional misconduct continues to be considerable. Attention has been called in previous reports to the fact that the great majority of such complaints are against lawyers who are not members of the American Bar Association. Many lawyers and some judges would not regard a substantial percentage of the complaints received by the Committee as serious in character. They relate to advertising and solicitation, failure to answer inquiries concerning matters placed in lawyers' hands, failure to push to a reasonably speedy conclusion business sent lawyers, and too frequently failure to remit promptly moneys collected for clients. Such follow-up as the Committee is able to make on items referred to local Bar Associations indicates that only in the more serious types of professional dereliction do local Associations generally appear to feel that action by them is merited. It is unfortunate that this is so, inasmuch as such an attitude continues to contribute an unfortunate color to the profession's reputation."

As to the steps which the Committee proposes to take at this time, by way of enforcing new Canon 43 and Canon 27 as revised, in relation to law lists, the report states, for the information of all members of the Bar:

"The Committee has devoted a considerable amount of its time to the discussion of the various ethical problems arising in connection with law lists, most of which have been referred to it by the Special Committee on Law Lists. It will be recalled that Canon 27 was extensively revised, and a new Canon 43 was adopted, which provided that a member may not permit his name to appear in a law list not approved by the American Bar Association. The Special Committee on Law Lists has approved approximately 50 of the upwards of 250 law lists that were in existence in 1937. This Committee has decided to undertake to notify each member of the American Bar Association whose name appears in an unapproved law list that he is violating Canon 43. It hopes that such members will order their names taken out of such lists.

"Under the standards approved by the Association for the approval of law lists, it is required that notice must be given by a law list to the Committee on Law Lists whenever a listee is guilty of professional dereliction. The Law List Committee appears to be determined to enforce this requirement. If approved law lists do report cases of professional dereliction, as it is their duty to do, it may well be that many cases will come to the attention of this Committee for consideration that now receive no consideration. The Law List

Committee has agreed to report to this Committee promptly any such cases.

"Several questions have arisen as to what information may properly be included in the biographical matter that appears in an approved law list. It may be of interest to the profession that the Committee has held that it is improper under Canon 27 to include in such matter a statement that a lawyer or law firm has digested for the law list or directory the statutes or other law of his particular State."

Concerning Bar Association rosters, the Committee reports its conclusions as follows:

"Certain Bar Associations have issued rosters of their membership and have therein made departures from ordinary membership rosters by the inclusion of information as to the fields of law in which particular members are expert or experienced. This departure, of course, has as its objective the promotion of the interests of each member, who doubtless hopes that the publication of such information with his name will result in business being forwarded to him. The voluntary Bar Association publishing such a roster, in all probability, hopes that this phase of service will encourage additions to its membership. The Law List Committee has decided that such rosters are not law lists, and this Committee has decided that, because they are not law lists, a lawyer may not properly permit publication of this information with his name, under Canon 27."

The Committee states that it "continues to receive inquiries as to the propriety of radio broadcasts and newspaper publicity sponsored by Bar Associations, looking to the improvement of the position of the legal profession in public esteem, with doubtless a hope that immediate improvement will be evidenced by an increase in the employment of lawyers. The Committee's opinions 121 and 179 have set forth the limitations that should be observed in all such campaigns."

Perhaps the most controversial aspect of the current report of the Committee is presented by its declarations on the mooted subject of legal clinics and related problems. Because of the keen and widespread interest, among members of the profession and the public, in this relatively new development, we publish here the Committee's statement in full:

"The volume of inquiry from persons who contemplate the formation of bodies for the purpose of obtaining legal services at low rates is interesting, and indicates that the profession must soon face the problem as to whether individuals may properly cooperate in an endeavor to obtain, in consideration of small regular payments, legal services when needed, through lawyers employed by the group. There has been much discussion in recent years of the profession's duty to provide legal services for all persons at such rates as they are able to pay, and free of charge for those who are unable to pay anything. The idea of the free legal aid bureau has spread rapidly in recent years as the result of the profession's recognition of its duty to those who need legal service and cannot pay therefor. The class of people somewhat better off financially, but still unable to pay the ordinary rates for legal service, is the class that is now under most general discussion. Individual lawyers are of course ethically free to render services to this group on whatever basis may be agreed upon, though Bar Associations through compulsory minimum fee schedules have sought to restrain lawyers from departures from published schedules, except with the consent of and to the extent permitted by committees set up for that purpose.

"In one or two cases Bar Associations have contemplated the establishment of offices to serve those who cannot pay the ordinary rates for legal services. In such cases, there can be no objection to the rendition of services at fees fixed for them, however low. The only question that would arise would be as to whether such an office can advertise its availability. But the type of enterprise about which inquiry is most frequently made contemplates an association of individuals, not necessarily unable to pay ordinary rates, for the sole purpose of obtaining for themselves legal services in return for regularly paid small membership fees. In general, such schemes contemplate advertising for, or solicitation of, prospective members of the society. Up to this time, the view has been held that a lawyer engaged by such a society, group or other organization, may not properly render services to its members concerning their individual affairs, but is limited to serving the organization itself in respect to its group or corporate affairs. Whether this view will be able to maintain itself in the face of a demand by people who desire to effect a cooperative arrangement for legal services when needed, without any thought of other profit, by making small regular payments, remains to be seen.

"In several cases, individuals have proposed to operate so-called legal aid clinics for the benefit of those who are unable to pay, reserving the right to charge such as are discovered by them to be able to pay. Such proposals, of course, have been uniformly condemned. It is generally conceded that such schemes cannot succeed unless they are advertised widely, so as to make their availability known to the class of persons they purport to serve."

The report chronicles the fact that "The Committee has promulgated formal Opinions 184 to 194 since its last report, and announces that a pamphlet is now in press, in which will appear the Committee's latest formal Opinions. Numbers 175 to 194, together with an index and annotations to the Canons of all Opinions published since the bound volume, appeared in 1936. The book of Opinions, together with pamphlets containing subsequent Opinions and the revised Canons of Professional and Judicial Ethics, may be obtained from the Headquarters Office in Chicago, for $1.00.

During the present Association year, the members of the Committee have been Herschel W. Arant, of Columbus, Ohio, lately appointed a Judge of the United States Circuit Court of Appeals for the Sixth Circuit, Chairman; Walter L. Brown, of West Virginia; Earle W. Evans, of Kansas; Albert B. Houghton, of Wisconsin; L. Barrett Jones, of Mississippi; Judge Frederic M. Miller, of the Supreme Court of Iowa; and Judge Orie L. Phillips, of Denver, Colorado, Judge of the United States Circuit Court of Appeals for the Tenth Circuit.

Report of the Standing Committee on American Citizenship

This Committee reports an active continuance of its "Nation-wide speaking campaign designed toward acquainting our people more intimately with the form of government under which they live and seeking to arouse more widespread interest concerning the privileges and obligations incident to American citizenship."

Through the cooperation and facilities of the Junior Bar Conference, more than 800 speakers are functioning, under the supervision of the Committee and the Conference.

Many radio programs, on Nation-wide networks and local stations throughout the country have been arranged by the Committee. Among the notable of many worthy features were "A More Perfect Union," broadcast from New Hampshire on the 150th anniversary of that State's ratification of the Constitution, and the broadcast from Hollywood, with the notable cooperation of many of the outstanding favorites of the screen and radio as well as the hearty aid of the National Broadcasting Company. The latter broadcast gave dramatic and vivid representations of the priceless privileges conferred by the courageous enforcement of the Bill of Rights. The talent and time given by radio and screen artists, and the time given by radio stations, could not have been purchased by the Association with its total resources.

In concluding its report, the Committee on Citizenship says:

"With growing unrest stirring the people of other lands, with rapidly changing philosophies of government supplanting the time honored theory of freedom of individual expression and activity enjoyed by those people through the years, with the spectacle of relentless persecution of one race of people by another, the self-governing citizens of the United States continue to enjoy the priceless heritage of democratic government under a Constitution safeguarding their lives, liberty and property. In view of these conditions, our citizens are becoming aroused from the apathy which has characterized their previous attitude toward government. The opportunities for the rendition of public service by the legal profession in the manner undertaken through the program of this Committee are greater than ever before. The Committee therefore recommends a continuation and expansion of its present program, and earnestly urges the cooperation of all members of the Association in its efforts to inspire in the people of the United States a proper appreciation of the privileges as well as the duties of American citizens."

The members of the Committee are RALPH R. QUILLIAN, of Atlanta, Georgia, *Chairman;* RICHARD H. FIELD, ROBERT GRANVILLE BURKE, GUY TOBLER, AMBLER H. MOSS, EARL F. MORRIS, DONALD B. HATMAKER, FRANK BROCKUS, JAMES C. INGEBRETSEN, and PHILIP H. LEWIS.

Report of the Section of Real Property, Probate and Trust Law

This Section reports an active year in several fields of work, and intensive preparations for its San Francisco sessions, with a diligent effort "to prevent the reading of long reports and to substitute instead brief informal statements by the several chairmen." The membership has held up satisfactorily, despite the establishment of Section dues this year to finance its publications; and "the casualties [have been] far less than we expected."

The various reports by Section Committees are attractively and concisely summarized in the Section report. These Section Committee reports are sent to members of the Section. The Section Committee on Changes in Substantive Real Property Principles "recommends the favorable consideration of the Uniform Property Act as a whole," and is "frankly in favor of the companion Act called the Uniform Estates Act, but makes no recommendation.

The Section Committee on Real Property Financing "is engaged in the study of the questions of commercial mortgage financing, seeking to find means by contract without the necessity of legislation to protect all parties in large-scale financing in loans, whether made by individuals or institutions." The Committee on a Uniform Mortgage Act has been making a study of a draft prepared by a sub-committee of the Central Housing Committee. Concerning the work of the Section's important Committee on Standards for Title Opinions, the report says that although "every title is unlike every other," the Committee "is working on a series of standards which it hopes to see generally adopted throughout the country." The Committee on Standards for Title Insurance has been making an especial study of the exceptions found in title insurance policy, but doubts whether standardization in the interests of the desirable uniformity is practicable at this time.

The Section Committee on the Improvement of Land Records makes a detailed report of its extensive endeavors in its field, as does the Committee on Conveyancing in Compliance with the Bankruptcy Act. Other Committee reports are interestingly summarized, and the information is given that the Committee on Current Trust Literature is making a brief digest of all trust literature published in legal periodicals from May 1, 1938, to April 30, 1939. This involves an examination of fifty-two periodicals. To each of the nine members of the Committee is assigned a definite number of periodicals to be examined. The examination includes all material dealing with trusts or trustees—in general, all items on the topics found in Bogert on *Trusts and Trustees.* The Committee is thus preparing a complete bibliography for the year.

In behalf of the Section Council, its report is submitted by George E. Beers, of Connecticut, as Chairman of the Section.

A LAW SCHOOL BRIEFING SERVICE

(*Continued from page* 504)

gain for its sponsor considerable popularity and good feeling. This keeps the school's placement record in high percentages, which in turn attracts students and promotes the growth of the institution. Perhaps even greater than these material benefits, the work of the Briefing Staff establishes a kindly disposed attitude on the part of older members of the bench and bar (products of a vastly different era in legal education) toward modern legal training in a community where such an accord was hitherto sadly lacking. Young and old lawyers cannot help but benefit from such a consonance.

On the basis of four and one-half years' experience, it may be safely concluded that the Briefing Service of the University of Louisville School of Law has rendered, and is continuing to render a profitable and estimable contribution to the attorneys it serves, the students who comprise its staff, and the school which fosters it.

London Letter

Unanimous verdict of Juries

A RECENT case in the Court of Criminal Appeal (Rex v. Mills) is an outstanding illustration of the need for the greatest care on the part of judges in their summing-up to the jury. Harold Sidney Mills had been convicted before the Recorder at the Central Criminal Court for obtaining a cheque by false pretences, and was sentenced to nine months imprisonment. The appeal was brought on the ground that the Recorder had misdirected the jury by implying that it was in keeping with their duty for the minority to accept the decision of the majority, and in telling them that he could not release them until they had reached a verdict.

What happened was that after the jury had retired to consider their verdict they returned for further direction as to the meaning of the words "intent to defraud." This direction was given. After which the Recorder said, with regard to a further question which had been put, "I understand that you have not agreed upon your verdict. Is that so?" The reply being in the affirmative, the Recorder proceeded "Well, I will say this to you, because it has been said by a very eminent judge in this building and I will repeat it to you: That it is of the utmost importance that a jury should come to a conclusion one way or the other at the end of a trial, because it is burdensome upon all concerned, including the accused, because it only means this, that, unless you do, the matter has got to be tried all over again; therefore you see the importance and necessity of coming to a conclusion one way or the other. Now this very eminent Judge said this "That where you have got one or two, a small minority, in the jury who are thinking perhaps differently from the others, it is quite consistent with their oaths as jurymen that they should, after hearing what the others have got to say, come to the conclusion that they themselves might be wrong, and it would be consistent with the discharge of their duty, and with their oaths, under those circumstances, if they thought they were wrong, to accept the view of the majority and come to the conclusion that the majority might be right, and in that way you come to a conclusion in which you all agree by the exchange of view, and perhaps a man in the minority might say: 'Well, I may be wrong.' That is quite consistent with the discharge of your duty."

The Recorder then added, "I must ask you to reconsider this matter and go back to your room, and when you have come to a conclusion I will come back into Court and take your decision, so that you may be released. I cannot release you until you have come to a conclusion, and therefore I have got to ask you to retire again and consider the matter in the light of what I have said to you." The jury retired and, after a lapse of some minutes, returned into Court with a verdict of guilty.

The Lord Chief Justice (Lord Hewart), in delivering the judgment of the Court of Criminal Appeal, said that nothing could be more deplored than the giving of an impression to a jury that it might be right for them to appear to have arrived at an agreement when they had not, or to appear to express a view which they did not honestly and individually entertain. "It goes without saying," he said, "that nothing could possibly have been further from the mind of the Recorder than to create any impression contrary to that well recognized principle, but the question is whether the expression he used could unfortunately have conveyed the wrong impression to the jury." He said that it was very important to observe the very words which the Recorder used upon this most grave and crucial matter, and that, with regard to those observations two criticisms were made. First it was said that the words "I cannot release you until you have come to a conclusion" amounted to putting pressure upon the jury to come to a conclusion though they had not in fact done so. It goes without saying that a conclusion that the prisoner was not guilty would have been just as much a conclusion as one that he was guilty. Further, a conclusion that it was impossible for the jury to agree would equally have been a conclusion.

The real difficulty however was what might have been the effect on the minds of the jury of the words which followed: "Where you have got one or two, a small minority in the jury, who are thinking perhaps differently from the others, it is quite consistent with their oaths as jurymen that they should, after hearing what the others have got to say, come to the conclusion that they themselves might be wrong." The conclusion required is the conclusion that they were wrong. The Recorder continued "and it would be consistent with the discharge of their duty and with their oaths under those circumstances, if they thought they were wrong to accept the view of the majority." That would be true only if the minority had been honestly and sincerely led to come to a view different from the view which they had hitherto held. "The criticism which had been directed against that passage," said Lord Hewart, "is that it may conceivably have led the jury or some members of the jury to coquette with the notion that, for the sake of conformity or convenience, it would be consistent with their oaths to make it appear that they accepted the view which in fact they did not accept. Such a conclusion as that would be utterly subversive. A loose acquiescence by a minority in the view of the majority for the sake of conformity would not merely be most undesirable, but flagrantly wrong. It is fundamental that a jury should agree, and by "agree" is meant honestly agree, not make a colourable appearance of agreeing."

Although there could be no doubt what the Recorder intended to convey to the jury, the Court of Criminal Appeal held the view that he used one or two perilous phrases which may conceivably have caused some members of the jury to incline their minds to a wrong view, and, in these circumstances, the appeal was allowed and the conviction quashed.

The rule of law which compels a jury to be unanimous in its verdict, however at variance their opinions may originally be, has doubtless given rise to many singular scenes. On the trial of the seven Bishops in the reign of James ii, the jury deliberated the whole of the night, owing, it is supposed, to the obstinacy of one Arnold, the King's brewer.

It is also upon record that a jury, experiencing considerable difficulty in arriving at an unanimous decision agreed to settle the matter by recourse to the expedient of Cross and Pile, or, to give it its more modern designation "pitch and toss." A coin was accordingly spun and the verdict arrived at by this means was taken to represent the opinion of them all. The verdict was, however, set aside.

Marriage in the Temple Church

On Saturday April 15th, 1939, the Hon. Rosalind Mary Finlay, only daughter of Lord Justice Finlay, was married in the Temple Church to Lieutenant John Osler Chattock Hayes, R.N., elder son of Major and Mrs. L. C. Hayes, of Nafford House, Eckington, Pershore, Worcestershire. The service was conducted by Canon Harold Anson (Master of the Temple), assisted by the Rev. A. L. H. Selwyn. The bridegroom and his best man were in naval uniform and naval officers formed a guard of honour. After the ceremony a reception, attended by about five hundred guests, was held in the Middle Temple Hall, which had been lent by the Benchers of the Middle Temple for the occasion.

The Temple Church is not licenced for the celebration of marriages. It is, therefore, necessary to obtain a Special Licence for the occasion in order to make the ceremony conform to the law. A special licence is granted by the Archbishop of Canterbury only, in accordance with the statute of 25 Henry viii, c. 21; a right confirmed to him by two further statutes—4 Geo. iv, c. 76, s. 20 and 6 & 7 Will. iv, c. 85, s. 1. It dispenses with the necessity for a fixed period of residence, and authorises marriage at any hour of the day or night, and at any place, whether consecrated or not.

The privilege of a special licence is supposed to be restricted to persons of high degree. A regulation made by Archbishop Secker in 1759 provided that special licences were not to be granted except to persons of the rank of peers or peeresses in their own right, their sons and daughters, dowager peeresses, privy councillors, the judges, baronets, knights, and members of Parliament; but this regulation does not bar the Archbishop from granting occasional favours beyond these limits. Special licences are issued from the Faculty Office, Doctors' Commons, the same form of affidavit being required as for a common licence. The stamp duty on a special licence is £5 and its cost, which is about £30, makes marriage by special licence a luxury which not everyone can afford. In recent years, however, this difficulty has been overcome on a few occasions, by those desiring to be married in the Temple Church, by the simple expedient of having the civil ceremony performed by a registrar of marriages, in the office of the registrar in conformity with the law on the subject, and the religious ceremony afterwards in the Church.

Three hundred years ago

The following interesting extract from the Records of Gray's Inn, which is similar to many in the early books of the other Inns of Court, seems to indicate that life was not always "one grand sweet song" in the legal world three hundred years ago:

22nd Nov: 1639.

"Whereas on Saterday last an outrageous insollencie and miscariage hath bene comitted by a great number of gent: of the societie and fellowshipp of Grayes Inn by cominge into the hall in the eveninge in cloaks and armed with swords and there holding a cupbord and affrontinge the orders and government of that society and the Readers of the same, who had very deservedly putt some gent: of the house out of comons, and upon this occasion divers gent: of the said house in a factious and mutinous manner put themselves out of comons without paying their dues whereof His Matie having taken notice out of his princely care of the well ordering and government of that and the rest of the Innes of Court hath been pleased to command us to take speciall care that an exemplary course be held for punishing and correcting the said abuses and insolencyes and that the said societie and other societies of the Inns of Court be more carefully looked into for the time to come soe as none may hereafter presume to comitt the like misdemenor And wheras Mr. Skipwith Mr. Pickering and Mr. Perrott three of the said gent: are all ready comitted to the prison of the Fleete and some other ringleaders and principall offenders wee shall punish hereafter according to there demeritts, wee being all assembled together by His Matis direccons for the cause abovesaid do upon deliberate advice with one uniforme assent thinke fitt and order for the present that all such gent: of the said society as have by or upon the occasion aforesaid gone out of comons and are either in the said house or in or about London doe tomorrow att diner retorne into the Hall and comons of the said house and then humbly submitt themselves to such examinacon, order and sensure as the Readers of the said socyety shall sett downe upon paine that every person disobeying the order in any point shall ipso facto be out of the house and loose there chambers and be made uncapable of any preferments by the said house att any time hereafter and shall be subject to such further punishment beyond the censures of the house as wee shall finde agreeable to the lawes of the realme, and this order to be forthwith sett upp and published in the hall that all whome it concernes may take notice thereof." S.

The Temple.

ADDITIONAL AMENDMENTS

(*Continued from page 499*)

V

Notice is hereby given that Mr. William L. Ransom, of New York, N. Y., a member of the Association, has filed with the Secretary of the Association the following proposed amendments to the Constitution and By-Laws of the Association:

1. Amend Article VIII, Section 2, of the Constitution, as follows: In line 9 of Section 2, of Article VIII, after the word "nominee," insert the following new matter:

For the office of Chairman of the House of Delegates, any fifteen members of the House may, not earlier than seventy days nor later than forty days before the opening of the annual meeting, file with the Secretary a nominating petition (which may be in parts) duly signed by them. With any such petition shall be filed the consent of such nominee.

2. That Article X, Section 1, of the By-Laws, as to "Committees," be amended as follows: Strike out lines 55 to 60, both inclusive, of Article X, Section 1, of the By-Laws, and insert in the place thereof the following:

The President may from time to time appoint a Membership Committee in such States as he may deem to be advisable or in the territorial group or any part of such group. It shall be the duty of each such Committee to encourage desirable applications for membership in the Association. Such Membership Committees as are appointed shall be under the supervision of a General Chairman appointed by the President.

HARRY S. KNIGHT, SECRETARY.

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from each state. They asked each of the District Judges to appoint a committee of two on rules in his district; and also invited the deans of all the law schools, which gave a conference of about 60 to 75 lawyers to consult on ways of improving and maintaining high standards in the courts of the Circuit.

Mr. Arthur T. Vanderbilt, former President of the American Bar Association, explained that the new bill was preferable to the one of last year in that, instead of centralizing everything in Washington and putting an impossible burden on the Chief Justice and his associates, it puts the power in the eleven Circuits, including the District of Columbia with its Circuit Court of Appeals as a circuit, thus retaining it nearer the scene and rendering it more competent to judge as to the functioning of the District Courts.

He called attention to the referenda a couple of years ago both of members of the American Bar Association and of non-members wherein, in both cases, by an overwhelming majority, this very type of bill (i. e., for some system to be set up within the Judicial branch of the government for the courts to control their own business affairs) was favored even while the vote was going against other proposals submitted.

Mr. George Maurice Morris, of Washington, D. C., appeared on behalf of the American Bar Association's Committee on Proposals Affecting the Federal Courts. He stated that this particular bill, H. R. 2973, was endorsed in January, 1939, by the House of Delegates of the Association at Chicago. Both Mr. Vanderbilt and Mr. Morris emphasized the effectiveness toward producing a remedy, in flagrant cases of non-current work by judges, of publicity or threats of publicity as to that condition.

The principal feature different from last year's bill is the Council of Circuit Judges, convened twice annually, to consider the quarterly reports of the District Courts to the Director. Among the functions now performed by the Department of Justice, a branch of the Executive department, to be transferred to the Administrative Office of the United States Courts would be: preparation of budget estimates for the courts; jurisdiction of such estimates before the Bureau of the Budget and the Committees on Appropriations of the Senate and the House; fixing salaries of clerks and other attaches of the courts within the range provided by law; payment of the salaries of judges and all the courts' personnel, also traveling expenses and other expenses of the judiciary; purchase and distribution of equipment and supplies; audit of accounts of the foregoing items and the accounts of the United States Commissioners; and the gathering of judicial statistics.

Plans for Ann Arbor Institute Completed

ADVANCE registration for the legal institute to be held at Ann Arbor on June 22, 23 and 24 by the University of Michigan Law School indicates that the idea of bringing the lawyers to the institute will prove fully as feasible as the accepted technique of bringing the institute to the lawyer. The unexcelled facilities of the Michigan Law School for housing visiting lawyers will start the new experiment off under the most favorable auspices.

The subjects to be discussed, Taxation, Wills and Trusts, and Labor Law, are all matters of importance to the general practitioner. The entire three days will be devoted to these subjects, sessions being held from 8:30 in the morning to 3:30 in the afternoon, with an intermission of an hour for lunch,

leaving a period free in the afternoon for golf and other relaxation. Quarters in the beautiful Law Quadrangle will be available to visiting lawyers, as the regular sessions of the school year will be over and summer school not yet commenced.

In general, the work of the institute will be the discussion of specific problems. Mimeographed outlines on the subjects will be furnished in advance to those who register. There will be opportunities for questions and discussion following each lecture. Dean Henry M. Bates will introduce the speakers. The subjects and lecturers will be as follows:

Taxation—Professor E. Blythe Stason, Dean-Elect of the Law School; Morrison Shafroth of Denver, Colorado, former General Counsel of the Internal Revenue Bureau; Professor Paul G. Kauper, Editor of the Michigan Law Review, formerly associated with White and Case, New York City.

Wills and Trusts—Professor Lewis M. Simes of the Law faculty, Adviser on the American Law Institute Restatement of Property.

Labor Relations—Professor Russell A. Smith, formerly associated with Cravath, de Gersdorff, Swaine and Wood of New York City.

"The Negotiation and Drafting of a Collective Bargaining Agreement" will be discussed from the point of view of the employer and from the point of view of the union by Mr. Albert E. Meder of the law firm of Beaumont, Smith and Harris, Detroit, and Mr. Charlton Ogburn of New York, former general counsel of the American Federation of Labor.

On Friday night there will be a dinner, which, it is planned, will be served in the Lawyers Club in the great dining hall patterned after the Banquet Halls in the Inns of Court.

The registration fee at Ann Arbor for three days, including lodging, will be $10.00. For commuters the charge will be $2.50 per day or $5.00 for three days. All members of the bar are cordially invited and it is suggested that reservations be made as early as possible, since accommodations are limited.

A Still More Remarkable Case

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

In the April number of the JOURNAL there is a letter from Charles S. Lyons, President of the Tacoma Bar Association, calling attention to a remarkable case of legal longevity. The person mentioned in Mr. Lyons' letter is Mr. Orville S. Galbreath, born in my own native State of Tennessee, and admitted to the bar on June 4, 1868. I desire to more than match his Roland with an Oliver.

In my home town of New Haven, Connecticut, there is practicing today Ex-Judge Henry Stoddard, who was born March 12, 1843. He was graduated from the Albany Law School at the age of twenty-one in the Class of 1864, and was immediately admitted to practice in New York. In September, 1864, he was admitted to the Connecticut Bar and has been practicing in New Haven ever since, excepting only a term of eight years on the Superior Court bench, which he left of his own volition in 1888. Therefore, in September of this year, he will complete seventy-five years of practice, including the eight years on the bench.

During a considerable part of the time when Judge Stoddard was a Judge of the Connecticut Superior Court, he was called upon to sit as a Justice of the Supreme Court of Errors. His first opinion as a Justice of the Supreme Court was *Webster v. Welton*, 53 Conn. 183, 1 Atl. 633 (1885), and his last opinion was *Turney v. Bridgeport*, 55 Conn. 412, 12 Atl. 520 (1887).

Judge Stoddard's name appears for the first time in the Reports of the Supreme Court of Errors as counsel in the case of *Shelton v. French*, 33 Conn. 489 (1866). Sixty-eight years later he made his most recent appearance in the Connecticut Reports as counsel in the case of *MacKay v. Aetna Life Insurance Company*, 118 Conn. 538, 173 Atl. 783 (1934).

Perhaps Judge Stoddard's most famous case was *William Jennings Bryan's Appeal*, 77 Conn. 240, 58 Atl. 748 (1904), in which the Great Commoner came off second best in his duel with his Connecticut opponent.

Before going on the bench Judge Stoddard was recognized as one of the leading lawyers of the State and was even more generally recognized as a leader of the bar after he left the bench.

He now goes to his office regularly and his friends are hoping that he will more than round out the century and complete his four score years of active legal work.

JOHN Q. TILSON.

Washington, D. C.

Ohio State Bar Association in Spring Meeting

UNDER the recently adopted policy of holding the semi-annual meetings in the spring and fall instead of in the winter and summer, the Ohio State Bar Association convened for its first Spring Meeting in Columbus, Ohio, on April 13-15.

At the opening of the general business session, Hon. Howard L. Barkdull of Cleveland, President of the Association, reviewed activities of the organization during the preceding nine months in his address on "The State of the Bar." The legislative program of the Association, he said, had been presented to the lawyers of the state in a series of regional meetings covering every county in the state; also, the first of a new series of district meetings of local bar executives, patterned after the meetings of state bar executives sponsored by the American Bar Association, had been held in Mansfield and was encouragingly successful. He briefly outlined the work being done by the various committees of the Association, and commented on the problems involved in relieving the overcrowded condition of the legal profession.

A high degree of interest was aroused by the report of the Committee on Integration of the Bar, presented by the chairman, former President Walter S. Ruff of Canton. Included in the report was the draft of a proposed rule of court providing for the integration of the bar of Ohio. After a thorough discussion from the floor, the proposed rule was referred back to the committee for revision and publication within sixty days. A plan was then adopted by which the revised rule will be discussed at four regional meetings throughout the state before it is voted upon at the Annual Meeting of the Association in October. If the rule is approved at the meeting, it will then be submitted to a referendum of all the members of the Association; and approval by a majority vote will result in its being submitted to the Supreme Court of Ohio for approval or disapproval.

The Committee on Judicial Administration and Legal Reform reported that a sub-committee had conferred with the Judicial Council of Ohio during the course of the latter's study of the new Federal Rules of Civil Procedure, and that as a result of the Council's recommendations, a bill has been introduced into the Ohio General Assembly providing for the adaptation to Ohio practice of some of the outstanding features of the new rules, notably pre-trial procedure, summary judgments and the placing of the rule-making power in the Supreme Court. The recommendation of the sub-committee that this bill be given the support of the Association was adopted and the bill was formally approved.

One of the outstanding features of the meeting was the address on "Administrative Law and American Democracy" by Col. O. R. McGuire, Chairman of the American Bar Association Special Committee on Administrative Law. After tracing the growth of bureaucracy in the United States and commenting on the possible final results of an unrestrained bureaucratic system of government, Col. McGuire entered upon an exhaustive discussion of the American Bar Association's Administrative Law Bill, now pending before both houses of Congress. At the close of the address, a motion was made and passed stamping the bill with the approval of the Ohio State Bar Association.

John T. Vance of Washington, D. C., Law Librarian of Congress, gave a highly interesting and entertaining address on the history and growth of the Congressional Law Library, replete with anecdotes concerning some of the great figures of American history who have thumbed its volumes.

A number of the Sections of the Association were privileged to hear authoritative speakers on their various subjects. The Taxation Section meeting was addressed by Hon. Roswell Magill, former Under-Secretary of the Treasury and Professor of Law at Columbia University; "The Widening Field for the Real Estate Lawyer" was discussed before the Real Estate Section by William H. Richards, President of the Title Guarantee & Trust Co. of Toledo; former State Bar President Robert Guinther, of Akron, and former Common Pleas Judge Chauncey L. Newcomer, of Bryan, ably presented the pros and cons of adapting the new Federal Rules to Ohio practice before the meeting of the Judicial Section; "The Law of Malpractice" was reviewed by Lawrence D. Stanley, of Columbus, at the meeting of the Insurance Law Section; and Speaker William M. McCulloch, of the Ohio House of Representatives, carried on an informal discussion of legislation affecting municipalities with the members of the Municipal Law Section.

After the close of the general business session, the Ohio members of the American Bar Association, briefly outlined the current program of the Association, discussing the functions of the House of Delegates, the 54 point program of the Committee on Judicial Reform and the recommendations of the Section on Administrative Law.

The final feature of the Spring Meeting was the banquet, at which addresses were delivered by Hon. John W. Bricker, Governor of Ohio, and by President Frank J. Hogan of the American Bar Association. President Hogan directed attention to the five points of the program which the American Bar Association is urging the state bar associations to follow this year, and closed with an appeal to the legal profession to spare no effort to maintain its traditional leadership in public affairs.

J. ROBERT SWARTZ, Asst. Sec'y.